



# **Study on the Temporary Protection Directive**

Final report

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January, 2016



**EUROPEAN COMMISSION**

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Luxembourg: Publications Office of the European Union, **2016**

ISBN 978-92-79-60666-3

doi:10.2837/561426

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## **1 Introduction**

This Final report is the final deliverable of the Study on the Temporary Protection Directive (2001/55/EC), an assignment undertaken by ICF Consulting Services Limited ("ICF"), on behalf of DG Migration and Home Affairs ("the Commission").

The Final Report contains the purpose, scope, design and conduct of the study, presents the analysis carried out and presents conclusions and recommendations.

This Final Report is structured as follows:

- Chapter 2 describes the methodology and work undertaken by the Study Team;
- Chapter 3 provides an overview of the Temporary Protection mechanism, reviewing its historical context, the Commission's proposal and negotiations and an explanation of the workings of the mechanism and application to date;
- Chapter 4 presents strengths and weaknesses of the Temporary Protection Directive (TPD);
- Chapter 5 examines pressures on the EU in the period 2001-2014 (these events are further examined in the case study descriptions in Annex 3) and summarises the reasons for non-implementation of the TPD;
- Chapter 6 identifies possible changes to the TPD and assesses these policy options.
- Chapter 7 includes a comparison between the preferred policy option for revising the TPD and the recently proposed provisional measures and permanent crisis mechanism.

## **2 Methodology**

### **2.1 Objectives of the Study**

The main **objective** of the Study was to evaluate the Temporary Protection Directive focusing in particular on:

- Understanding the reasons for the Directive's non-implementation via the analysis of practical scenarios, based on actual past or possible future situations where the Directive could have been or could not be triggered, and;
- Analysing the relevance for the challenges being faced today of the original objectives of the Directive as an instrument for helping to deal with large inflows of displaced persons, including asylum-seekers, via an EU-level temporary protection instrument;

The work undertaken fed into a detailed analysis of the strengths and weaknesses of the Temporary Protection Directive (as presented in Chapter 4) and served to identify possible changes (Chapter 6) which could ensure the Directive's relevance and efficacy in meeting current challenges.

### **2.2 Outline of the methodology**

The study involved the following main data collection tools:

- Desk research;
- Quantitative analyses;
- Interviews with key stakeholders in the triggering and implementation of the TPD; 13 interviews conducted with five Commission officials, EASO, European Parliament, UNHCR, ECRE, and IOM;
- Survey with Member States; 25 out of 28 responses received (DK declined participation, EL/IT have not completed their Survey, but were interviewed per telephone);
- Follow-up interviews with Member States were completed with BG, CY, DE, EL, FR, HU, IT, NL, MT, PL, SE and UK.

For the follow-up interviews, Member States were selected on the basis of quantitative analyses of Eurostat data as well as self-reporting in the Survey, indicating pressures on the national asylum system between 2001 and 2014. This selection was done in consultation with the Commission. The main aim of the follow-up interviews was to investigate in more detail practical scenarios where the Directive could have been or could not be triggered. Out of all Member States involved in this phase, only one (UK) which had not experienced a situation of mass influx/pressure was included: it was considered useful to consult as an important stakeholder to speak to in view of the large number of applications lodged and to explore possible future policy options.



## **2.3 Work undertaken by the Study Team and challenges encountered**

The Study team faced some **challenges** when implementing the Study. On a case-by-case approach, adjustment to the methodology or alternative approaches were sought in close cooperation with the client.

As to the collection of evidence from all Member States, it should be noted that not all returned questionnaires contained the information requested. Moreover, not all questions were addressed or answered in a uniform or exhaustive manner. This may be due either to the fact that Member States did not experience cases of mass influx or pressure or to the fact that the TPD was never implemented, hence not allowing for a customary evidence-based evaluation.

Supplementary desk research and follow-up interviews allowed to collect additional information or explore issues in greater detail. While in some cases contacts with relevant national authorities were easily established, an intervention from the European Commission was needed to successfully undertake interviews with a number of Member States. In general, the quality of the information collected through follow-up interviews allowed the study team to pin down important issues which informed significant parts of study findings and consequently the analysis of the current TPD and its possible revision.

### **3 Background to the Temporary Protection Directive**

#### **3.1 What preceded the adoption of the Temporary Protection Directive**

##### **3.1.1 National forms of temporary protection preceding the adoption of the TPD**

Temporary protection regimes are classically implemented as emergency responses to mass influx situations. In contrast to the 1951 Convention which is implemented by means of individualised status determination, temporary protection is group-based protection which is used by states to prevent the blocking of asylum systems, whilst also providing immediate protection to those in need. Crucially, prior to the adoption of subsidiary protection, temporary protection status broadened the narrow understanding of a “refugee” as enshrined in the Geneva Convention, although the protection status - in contrast to subsidiary protection - is generally regarded as an exceptional measure only to be applied in situations of mass influx<sup>1</sup>. In the context of the Yugoslavian conflict, UNHCR described temporary protection as a “flexible and pragmatic means of affording needed protection to large numbers of people fleeing human rights abuses and armed conflict in their country of origin, who might otherwise have overwhelmed asylum procedures”<sup>2</sup>.

Beyond this “classical” form of temporary protection, there are other time-limited protection statuses applied by states. While these may not be associated with mass influx situations, or entitled as “temporary protection”, in reality these protection statuses have the same practical effect as temporary protection schemes. This for example includes national protection statuses with time-limited protection for humanitarian purposes to persons who fall outside the 1951 Convention.

Taking the above into account, many EU Member States have made widespread use of national temporary protection schemes and statuses, in particular in the 1990s. Temporary protection was granted to persons fleeing the war in:

- Bosnia (e.g. Austria, Belgium, Denmark, France, Ireland, Germany, Poland, Spain);
- Kosovo (e.g. Austria, Belgium, France, Germany, Ireland, Poland, Spain, Sweden).

Some Member States continue to make use of temporary protection statuses, which were applied e.g. to Iraqis (e.g. Finland, Romania, Sweden) and Syrians (e.g. Germany). See for further information Annex 2.

##### **3.1.2 Historical context**

The birth of the Temporary Protection Directive (TPD) has its origins in the nineties. The question how to address the regulatory challenge following a mass influx of persons fleeing conflict first arose in Europe as a consequence of the Yugoslavian war in the early 1990s<sup>3</sup>. European practice in the field of asylum following mass humanitarian crises was to provide temporary protection status<sup>4</sup>.

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<sup>1</sup> See for further information on the differences between temporary and subsidiary protection the El Gafaji case: ECJ C-465/07 Elgafaji vs. Staatssecretaris van Justitie

<sup>2</sup> Kerber, Karoline, Temporary Protection in the European Union: A Chronology, Georgetown Immigration Law

<sup>3</sup> Nuria Arenas, the concept of mass influx of displaced persons in the European Directive establishing the temporary protection system, European Journal of Migration and Law 7, 2005.

<sup>4</sup> For example, the “*Duldung*”, or tolerated residence in Germany; Exceptional Leave to Remain in the United Kingdom; Provisional Permission to Remain in the Netherlands; or “B” or “F” temporary residence status in other parts of Europe. See Akram S. M., Rempel T., ‘Temporary Protection as an instrument or

With the continuation of the crises in the 1990s, the administration and evolution of the various temporary protection schemes across Member States was however inconsistent and policies highly discretionary (see further Section 3.1.2)<sup>5</sup>. The application of the different regimes started producing visible undesired effects; e.g. large discrepancies between the numbers of people seeking refuge in the different Member States, secondary movements etc., and revealed the dire need for harmonisation<sup>6</sup>. Following the adoption of a Council Resolution in 1995<sup>7</sup> and a Council Decision in 1996<sup>8</sup>, the Commission proposed a Joint Action to harmonise temporary protection status across Member States in 1997. However, no unanimous agreement on the proposal including a modified version was found<sup>9</sup>.

In 1999, the lack of a regulatory framework for a situation of mass influx became painfully clear when the Kosovo crisis brought about the largest flow of refugees in Europe since the Second World War. The response of Member States was uncoordinated and pressure unevenly distributed, e.g. some Member States received higher numbers of applications, in view of e.g. their geographical situation (neighbouring the conflict zone), the presence of particular communities, and favourable reception conditions<sup>10</sup>. Next to such spontaneous arrivals, UNHCR and IOM carried out a humanitarian evacuation programme to airlift Kosovars, who were to be distributed across Member States on the basis of a voluntary quota scheme. Some Member States however disagreed to receive these persons, which further added to the uneven pressure on Member States.

To cope with the challenges raised by such influx, several Member States, acting independently, implemented their national form of temporary protection. Temporary protection differed greatly however from one Member State to another (with regard to the status, the maximum duration, procedures gaining access to asylum procedures, and the rights and benefits) and this produced imbalances as they oriented refugee flows towards the most "generous" Member States and also resulted in secondary movements. Consequently, a harmonisation process for granting temporary protection was started. With the introduction of the Amsterdam Treaty<sup>11</sup> and in line with the aim to establish a Common European Asylum System (CEAS) as called for by the 1999 Tampere Conclusions, the Temporary Protection Directive was proposed to provide for a structured framework to help Member States act in a uniform, balanced and effective way, based on the principle of solidarity, with a mass influx of displaced persons (see section 3.1.3)<sup>12</sup>.

### **3.1.3 Commission proposals and negotiations**

As early as the 1990s, the necessity to harmonise temporary protection policies was already recognised following the discretionary and inconsistent application of temporary protection across Member States. Under the Maastricht Treaty the Commission

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Implementing the Right of Return of Return for Palestinian Refugees' (2004) 22(1) Boston University International Law Journal 1-161.

<sup>5</sup> Akram S. M., Rempel T., 'Temporary Protection as an instrument or Implementing the Right of Return of Return for Palestinian Refugees' (2004) 22(1) Boston University International Law Journal 1-161.

<sup>6</sup> Muriel Guin, "Vers un regime communautaire de protection temporaire sur une base solidaire".

<sup>7</sup> Résolution du Conseil du 25 septembre 1995, JOCE du 7 octobre 1995, nr C 262. This constituted a resolution on burden-sharing that addressed the admission and residence of displaced persons on a temporary basis.

<sup>8</sup> Decision du Conseil du 4 mars 1996, 96/198/JAI, JOCE du 13 mars 1996, nr L 63 on an emergency procedure for burden-sharing in situations of mass influx.

<sup>9</sup> Kerber notes that the main problems included: 1) burden-sharing; 2) relationship between temporary protection and asylum procedures; 3) long-term solutions. See Kerber, Temporary Protection in the European Union, 1999.

<sup>10</sup> Interview with Commission official

<sup>11</sup> The Amsterdam Treaty introduced Title IV on "visas, asylum, immigration and other policies related to the free movement of persons, see in particular also Art. 61 and 63 TEC.

<sup>12</sup> See also Muriel Guin, "Vers un regime communautaire de protection temporaire sur une base solidaire".

submitted proposals for a Joint Action on temporary protection based on Art. K.3 (2) (B) TEU on March 5, 1997, and a modified version on June 24, 1998<sup>13</sup>. However, divergences of opinion among the Member States mainly on the question of burden-sharing delayed the debates on the instrument, which was never adopted by the Council. After the entering into force of the Treaty of Amsterdam, the Commission adopted a proposal in 2000 on Art. 63, point 2(a) and (b) EC. The Commission's proposal took a step back from the previous one with regard to physical distribution of beneficiaries insofar as it reflected the importance of national control over the numbers a State was willing to receive<sup>14</sup>. Difficult and lengthy discussions ensued, during which Member States who had been more affected than others during the Kosovo crisis (e.g. Austria, Belgium, Germany, Netherlands, Luxembourg and Sweden) in particular supported the Commission's proposal<sup>15</sup>.

Several provisions in the Directive proved difficult to agree upon. The following points were subject to much debate:

- The definition "temporary protection";
  - Exceptional character: Some Member States argued for a limitation of temporary protection to emergency situations of *collective* nature. However, no agreement was reached to insert this.
- The definition "mass influx";
  - "Large numbers": Suggestions from both UNHCR and ECRE to further clarify what "large numbers" entails were not agreed upon. Suggestions included the reference to the occurrence of a *sudden* mass influx; the arrival of large numbers of displaced persons in a *short* period of time; "persons for whom, due to their numbers, individual refugee status determination is procedurally impractical.
  - "Adverse effects": The original Commission proposal linked the activation of temporary protection to the requirement that the asylum system must be overstrained. Several delegations however, e.g. France, Germany, Austria, Italy, and the United Kingdom disagreed and argued that temporary protection ought not to depend on the lack of functioning of the asylum system. As a result, the words "in particular if" were inserted in Art. 2(a)<sup>16</sup>.
- Method for activating and terminating temporary protection;
  - Unanimity/QMV: Member States found agreement on *qualified majority voting*, however, during negotiations some Member States expressed reservations and favoured the Council Decision for activation/termination to be adopted by unanimity.
- Time-frame adoption Council Decision: the Commission's original proposal laid down that the relevant provision of the Council's Rules of Procedure governing urgent cases may apply where appropriate. This provision was however deleted. A provision proposed by the European Parliament to fix a mandatory period of three months during which the decision had to be taken after submission of the Commission proposal had also not been agreed upon<sup>17</sup>.

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<sup>13</sup> Muriel Guin, "Vers un regime communautaire de protection temporaire sur une base solidaire".

<sup>14</sup> UK Survey

<sup>15</sup> Interview with Commission official.

<sup>16</sup> Karoline Kerber, the Temporary Protection Directive, *European Journal of Migration and Law* 4: 193-214, 2002.

<sup>17</sup> Karoline Kerber, the Temporary Protection Directive, *European Journal of Migration and Law* 4: 193-214, 2002.

- The principle of solidarity;
  - Equal distribution of burden: The question whether burden-sharing consisted of financial compensation or actual reception of persons was one of the most controversial. In the beginning of the negotiations, France was in favour of solely financial solidarity, whereas other Member States favoured “physical” solidarity, i.e. the transfer of persons according to reception capacities.
  - Double voluntarism: The European Parliament requested the Decision to bindingly allocate certain numbers of displaced persons to the Member States<sup>18</sup>, which was rejected.
  - Indicating reception capacity (Art. 25): Some Member States contested the Commission’s proposal to state the reasons for incapacity to receive, whereas others argued for the breakdown of Member States’ reception capacities.
  - Cooperation between Member States for the transferral of residence of persons enjoying temporary protection (Art. 26): UNHCR suggested the shared responsibility for the redistribution to be in line with international protection needs and basic protection principles.
- Obligations of Member States towards persons enjoying temporary protection;
  - The right to lodge an application for asylum: According to Kerber<sup>19</sup>, opinions on this issue were very controversial. The original Commission proposal provided that access to the asylum procedure shall be granted no later than the end of the temporary protection. UNHCR, for this reasons, initially opposed the Commission’s proposal. Similarly, France and Spain argued that beneficiaries should be able to lodge an asylum application at any time without possibility of the Member State suspending the processing of asylum applications. A compromise solution was found, supported by UNHCR, which entails that beneficiaries must be able to lodge an application for asylum at any time. However, asylum applications do not have to be processed immediately, but can be suspended, although examination should be completed after the end of the temporary protection period.
  - Free movement: A special right to free movement in the Member State of reception as proposed by the European Parliament and UNHCR was not introduced.
  - The right to employed or self-employed activities and social security: The provisions in its present version are much narrower than the original Commission proposal. The Commission proposal had originally contained the principle of equal treatment of beneficiaries with refugees regarding both access to the labour market and work conditions. This was supported by some and opposed by others<sup>20</sup>. Several delegations also had difficulties with the comparison with refugees<sup>21</sup>.
  - The issuance of residence permits and visas: Visas were supposed to be issued free of charge, but during negotiations it was decided that the costs could alternatively also not be “reduced to a minimum” as included in Art. 8 (3). With regard to residence permits, some Member States argued for the

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<sup>18</sup> European Parliament Opinion, OJ 2001, C 343/84.

<sup>19</sup> Karoline Kerber, *the Temporary Protection Directive*, *European Journal of Migration and Law* 4: 193-214, 2002.

<sup>20</sup> According to Kerber, Sweden supported access of beneficiaries to the labour market, whereas Austria refused it.

<sup>21</sup> France, Netherlands, Portugal and Finland see Council document 11495/00 ASILE 41 at 6.

possibility of withdrawal of residence permits during the period of temporary protection.

The Directive was finally adopted on 20 July 2001<sup>22</sup>. The following sections describe and analyse the Directive.

## **3.2 The temporary protection mechanism**

### **3.2.1 Objectives**

The Temporary Protection Directive was the first legislative instrument in the field of asylum and was considered a “tool in the service of a common European asylum system”, enabling it to operate smoothly and not to collapse under a mass influx.

The main aim of the Directive is two-fold:

- To establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who cannot return to their country of origin, and;
- To promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.

The specific aims of the Directive are listed in the Commission’s proposal for the TPD and include the following<sup>23</sup>:

- To avoid a total blockage in national asylum systems in the event of a mass influx, which would have negative effects on the Member States, the persons concerned and other persons seeking protection outside the context of the mass influx, and thereby support the viability of the common European asylum system;

To secure immediate access to protection and fair rights to the persons concerned;

- To clarify the link between temporary protection and the Geneva Convention, safeguarding the full application of the Convention;
- To contribute to achieving balance between the efforts made by the Member States to receive the persons concerned by offering coordination facilities in the event of a mass influx in the European Union and in implementing temporary protection;
- To give practical expression to solidarity in the reception of the persons concerned by means of financial solidarity and the double voluntary action in receiving them.

### **3.2.2 The mechanism**

Figure 1 presents the intervention logic of the Temporary Protection Directive.

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<sup>22</sup> Karoline Kerber, the Temporary Protection Directive, *European Journal of Migration and Law* 4: 193-214, 2002.

<sup>23</sup> COM (2000) 303 Final.

Figure 1. Intervention logic

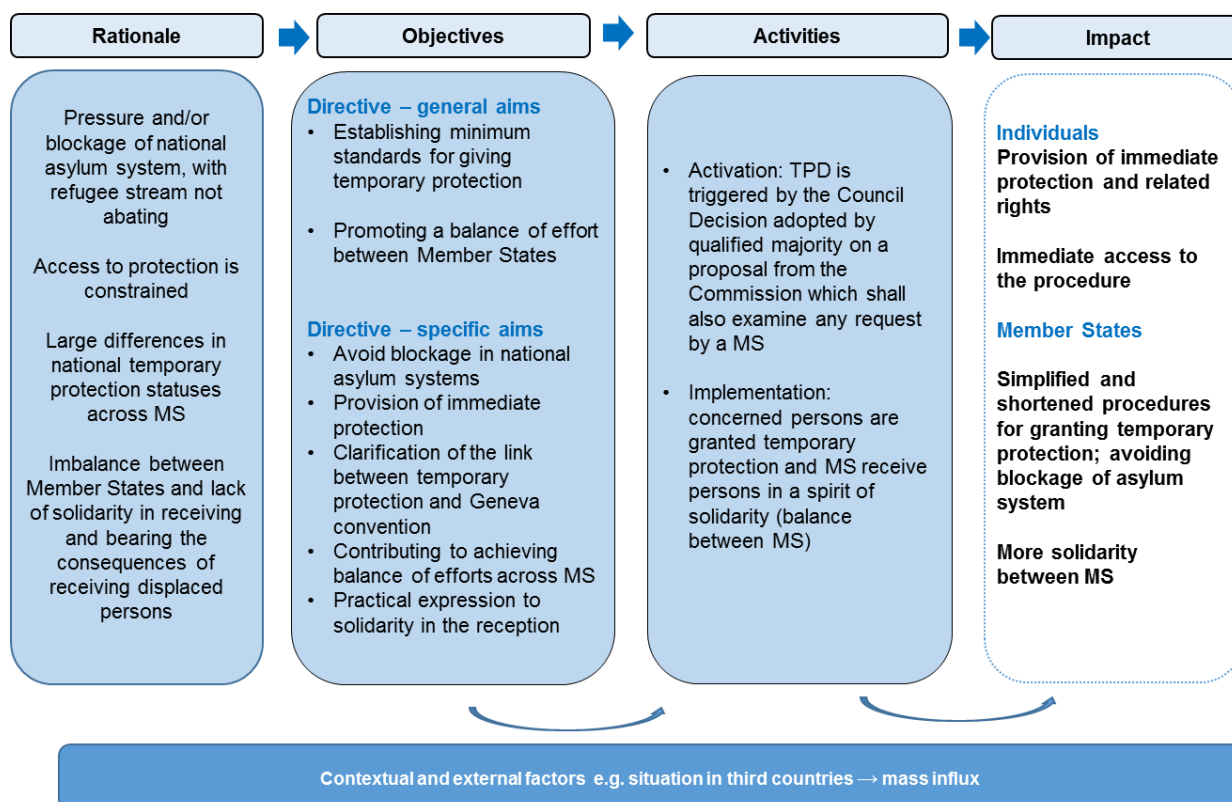


Table 1 gives an overview of the main provisions laid down in the Temporary Protection Directive.

Table 1. Overview of the Temporary Protection Directive as laid down in Council Directive 2001/55/EC

Criteria	Procedure	Rights	Solidarity mechanism
Arrival in the Community (spontaneous or aided) of a large number of displaced persons (Art. 2 (d))	A decision to grant TP is based on a Council decision adopted by qualified majority voting after a proposal from the Commission which examines any request from MS (Art 5)	Residence permits (Art. 8) A document in which provisions of TP are set out (Art. 9)	Reception of displaced persons as an expression of <b>general Community solidarity</b> (Art. 25)
Specific country or geographical area (Art. 2 (d))	<b>Content of the proposal</b> (COM): (Art. 5 (1))	Employment (employed or self-employed activities) (Art. 12)	Financial <b>solidarity mechanism</b> by provision of emergency assistance under the ERF (Art. 24)
Unable to return to country of origin due to the situation prevailing in that country; persons who have fled areas of armed conflict or endemic violence; persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights (Art. 2(c)) <sup>24</sup>	a description of the specific groups of persons to whom the TP will apply; the date on which the TP will take effect; an estimation of the scale of the movements of displaced persons.	Educational opportunities, vocational trainings in the workplace (Art.12) Accommodation and social/medical assistance/healthcare (Art.13)	Solidarity in <b>physical reception</b> based on "double volunteerism"; the <b>will of the State</b> to receive and <b>consent of individual</b> to be received (who are not yet in the State) (Art. 25 (1) (2)):
In particular if: Mass influx risks that the asylum system will be unable to process the influx without adverse effects (i.e. pressure) <sup>25</sup> (Art. 2 (a))	<b>Content of Council Decision:</b> (Art. 5(2)) a description of the specific groups of persons to whom TP applies; the date in which TP will take effect; Information from MS;	Education opportunities for minors (under 18) (Art.14) Family unity (Art.15 (1) (2) (3)) Legal guardianship of unaccompanied minors (foster family, reception centres) (Art. 16 (1) (2))	MS <b>indicate capacity</b> to receive at the time the mass influx is declared. Subsequently, MS can also indicate <b>additional reception capacity during the temporary protection period</b> (Art.25 (1)) Subject to the consent of the individual, MS cooperate with <b>transferral of the residence</b> of persons enjoying temporary protection (Art. 26)

<sup>24</sup> ICF Proposal for a Study on the use of new approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection, page 13

<sup>25</sup> Ibid



Criteria	Procedure	Rights	Solidarity mechanism
	<p>Information from the Commission, UNHCR &amp; other IOs.</p> <p><b>TP Duration:</b> maximum 3 years (Art. 4)</p> <p><b>TP Termination:</b> (Art. 6)</p> <p>when the maximum duration has been reached;</p> <p>termination at any time, by Council Decision adopted by a qualified majority on a proposal from COM.</p>	<p>Access to the asylum procedure (Art. 17)</p> <p>Limited judicial protection (Art 29)</p>	<p>If massive influx exceeds reception capacity, the Council may recommend <b>any additional support</b> for MS affected. (Art. 25 (3))</p>

### 3.2.3 Status of transposition

The transposition of the Temporary Protection Directive was evaluated in a 2007 Study conducted by the Odysseus Network<sup>26</sup>. The Study reports that all Member States had transposed the Directive, except Denmark, which is not bound by it under Recital 26. Although Ireland was initially not bound by the Directive, it requested its application in 2003<sup>27</sup> following which the Commission adopted a favourable decision<sup>28</sup>. However, to date Ireland has not transposed the Temporary Protection Directive<sup>29</sup>.

The Odysseus evaluation indicated that by 2007, only five Member States had fully transposed all provisions<sup>30</sup>, whereas the vast majority had encountered difficulties<sup>31</sup>. Based on a quantitative assessment of all difficulties reported by the Odysseus Study, the main transposition issues relate to:

- Art. 5; four Member States did not have any provision in their national legislation authorising the Council to introduce temporary protection. Instead, ad hoc governmental decision grant/terminate temporary protection;
- Art. 9; five Member States had not transposed the obligation to provide for a document explaining the provisions of temporary protection in a language likely to be understood;
- Art. 21; seven Member States had not transposed the reference to safeguarding human dignity in voluntary return measures;
- Art. 26; eleven Member States had not transposed the reference to the consent of the person concerned for the transferral of residence from one Member State to another (art. 26 (1)), whereas nine Member States had not transposed the grant of temporary protection in the new Member State when a transfer is made (Art. 26 (4));
- Art. 28; in eight Member States' national legislation the grounds for the exclusion on temporary protection are extended.

The Odysseus Study identified serious problems of transposition, in particular, in Austria, Italy, Lithuania and the Netherlands, where most provisions as set out above were not or not fully transposed. For example, in Austria the legislation provides for a standard which is less favourable than the Directive; an ad hoc order will have to be issued for the activation and cessation of temporary protection, and; there are significant gaps in the transposition of the obligations towards the persons temporarily protected (e.g. family reunification) as well as those concerning return and solidarity.

The results of the Member State survey confirm that the majority of transposition issues remain valid: a total of eight Member States confirmed that none of the issues had been resolved<sup>32</sup>; five Member States reported that some, but not all issues had been

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<sup>26</sup> Odysseus Network (2007), Study of the "Conformity checking of the transposition by Member States of the directive in the sector of asylum and immigration" done for DG JLS of the European Commission (Contract JLS/B4/2006/03)

<sup>27</sup> The EMM report (2010), The different national practices concerning granting of non-EU harmonised protection statuses, page 12.

<sup>28</sup> Commission Decision of 2 October 2003 on the request by Ireland to accept Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (notified under document number C(2003) 3428)

<sup>29</sup> The survey received by Ireland states that "The Irish Government has committed to the introduction of an International Protection Bill in 2015. This new measure will provide for the introduction of a single procedure and it is intended that it will also fully transpose the TPD".

<sup>30</sup> CY, DE, HU, PL and UK

<sup>31</sup> AT, BE, CZ, ES, FI, FR, EL, IR, IT, LA, LT, LU, MT, NTH, PT, RO, SL, SK, SE

<sup>32</sup> BE, CY, FR, LT, LU, MT, NL, PT

resolved<sup>33</sup>; four Member States reported that all issues were resolved<sup>34</sup> and the remainder of Member States did not reply to the questions in the survey concerning transposition<sup>35</sup>. The serious problems as identified by the Odysseus Study in Lithuania and the Netherlands would seem to continue to exist, although the Netherlands notes in its survey that "it does not agree with the points as identified in the Odysseus Study"<sup>36</sup>.

As a result of the incorrect or incomplete transposition of the provisions in the Directive by Member States, the following problems, further elaborated in Chapter 4 and 5, may arise:

- Possible delay in the provision of temporary protection due to requirements in some MS for the adoption of hoc governmental decision;
- Discrepancies in the rights granted to beneficiaries, which may prove an obstacle in the redistribution of beneficiaries across the EU.

### **3.2.4 Application to date**

To date, the Temporary Protection Directive has not been implemented. In 2011, during the Arab Spring, Italy and Malta requested its activation following the high number of applications received from Tunisia. Their requests were, however, not followed up on insofar as the Commission did not put forward a proposal to Council<sup>37</sup>.

In comments prior to a Justice and Home Affairs Council Meeting in April 2011, Malmström said the following: "It is still premature to activate the Temporary Protection Directive and there are other ways to help Malta and Italy"<sup>38</sup>.

In her online blog in April 2011 she wrote, in a similar vein: "At this point we cannot see a mass influx of migrants to Europe even though some of our Member States are under severe pressure. The temporary mechanism is one tool that could be used in the future, if necessary, but we have not yet reached that situation."<sup>39</sup>

According to the reply received from Malta on our Survey, the activation was nevertheless also discussed in COREPER<sup>40</sup>, within the Council, as well as bilaterally with other Member States. However, as reported by Malta: "Member States did not consider that the mechanism should be triggered".

These situations will be further explored in Chapter 4 (strengths and weaknesses) and 5 (reasons for non-implementation).

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<sup>33</sup> BG, CZ, ES, HU, SK

<sup>34</sup> AT, LT, PL, RO

<sup>35</sup> EE, FI, SE, SI.

<sup>36</sup> NL Survey.

<sup>37</sup> [http://immigrazioneoggi.it/daily\\_news/notizia.php?id=002891#.VEfR4\\_mUd8E](http://immigrazioneoggi.it/daily_news/notizia.php?id=002891#.VEfR4_mUd8E)

<sup>38</sup> <http://www.timesofmalta.com/articles/view/20110411/local/malmstrom-again-rejects-call-for-activation-of-migration-mechanism.359381>

<sup>39</sup> <http://blogs.ec.europa.eu/malmstrom/tag/temporary-protection-mechanism/>

<sup>40</sup> Committee of Permanent Representatives to the Council of the EU.

## 4 Strengths and weaknesses of the TPD

### 4.1 Introduction

In this Chapter, the Study Team identifies the strengths and weaknesses “of different elements in the TPD, as a Union-level tool for helping to deal with a large influx of displaced persons, including asylum seekers” (TOR page 2). This is done on the basis of evidence collected through desk research and consultation<sup>41</sup> with stakeholders on the one hand and the analysis of scenarios involving a mass influx of displaced persons, including asylum seekers, faced by the EU between 2001 and 2014 (see Annex 3) and of hypothetical scenarios that may occur in the EU in the future on the other (see Annex 4).

Table 2 presents an overview of the main strengths and weaknesses of the TPD. For clarity of presentation, the strengths and weaknesses identified have been clustered around a specific principle of the TPD (e.g. “procedure”). However, it is also clear that elements of the TPD are intertwined and hence act together as a (mutually reinforcing) strength or weakness.

The strengths and weakness are further elaborated from Section 4.1 onwards, on the basis of which a first indication of possible amendments to the TPD is given. A more detailed and thorough discussion of these and other policy options is provided in Chapter 6.

*Table 2. Strengths and weaknesses of TPD*

Strength	Weakness	Principle
Broad definition of “mass influx” to cover a wide range of different types of inflows and related pressure on the national asylum system(s) (not confined to numerical thresholds / indicators)	Lack of clear definition and indicators of “mass influx” resulted in high threshold and strict interpretation (measured at EU level) which underpin the non-application of TPD	Definition
A flexible instrument to be invoked at Member States’ discretion, allowing for a case-by-case assessment and provision of immediate protection	Cumbersome and lengthy activation procedure influenced by political factors;  Monopoly position of COM as to making a proposal to activate the TPD;  Limited details on the procedures to request/examine activation of TPD	Procedure
Solidarity principle (financial solidarity and physical distribution)	Solidarity principle (physical distribution) based on double voluntarism. Lack of clear rules for distribution, lack of common indicators to calculate reception capacities.	Solidarity
TPD remains a “unique mechanism” aiming to respond to mass influxes/humanitarian crisis,	TPD in its present form not able to tackle current migratory challenges or crises.	Definition, Procedure

<sup>41</sup> Survey, interviews plus workshop (see Section 2).

Strength	Weakness	Principle
nature differs from other CEAS instruments)		
The level of rights approximates that MS reluctant to invoke a system Definition, granted to beneficiaries of that may have acted as a pull Rights international protection, as laid down factor (providing for high standard in the Qualification Directive; high across the EU); plus incomplete level of rights compared to those transposition of rights at MS level. granted via national temporary protection regimes		

#### 4.2 A broad definition of mass influx, resulting in flexibility but also obstacles in its application

Many of the strengths and weaknesses identified relate to the definition of mass influx, or, more precisely, to the legal requirements to be simultaneously met in order to invoke the activation of the TPD.

Article 2 (a) of the TPD defines 'temporary protection' as a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.

Article 2 (d) of the TPD states that 'mass influx' means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme.

According to some experts and sources, **the legislator purposely opted for a broad definition of mass influx** which would allow to cover different types of inflows and types of pressure, not confined to numerical thresholds or linked to specific indicators<sup>42</sup>. TPD was considered as a flexible instrument to be invoked on a case-by-case basis: the reasons for its activation could have been different and not limited to a pre-defined set of conditions<sup>43</sup>.

Indeed, one of the sources' publication (2001) states<sup>44</sup> that the TPD was devised to be a *flexible* instrument, able to respond to *different* types of mass influx, such as:

- 1) An increase in applications for international protection due to a sudden influx; or
- 2) Due to a gradual rise; or
- 3) In the wake of an evacuation programme; or
- 4) A combination of the above.

The **flexibility of the TPD to respond to a range of different types of mass influx** was, and remains, a **strength** of the TPD. The legislator hereby secured a large 'action

<sup>42</sup> Interview with Commission official and an external expert.

<sup>43</sup> Interview with Commission officials and an external expert.

<sup>44</sup> Muriel Guin describes the Directive as allowing for "une souplesse de réaction par rapport aux différents types d'afflux massifs qui pourraient survenir (accumulation de demandes d'asile formant peu à peu un afflux massif, demandes soudaines; personnes arrivant par des programmes de type "évacuation humanitaire"; mélange de chacune de ces hypothèses), tout en l'encadrant dans un mécanisme communautaire de régulation" (Guin, 2001 in Marinho 2001: pg. 19).

radius', with its broad definition or usage of the term 'mass influx' potentially covering a wide variety of situations where its activation could be of added value.

#### 4.2.1 "Large numbers"

The phenomenon of 'mass influx' could be defined from a purely demographic, sociological or even historic perspective, focusing in particular on the *size/volume of the movement* of displaced persons and their arrival on EU territory. With regard to the TPD, this can, and has led, to a debate as to what absolute or relative numbers should be attained, in order for this movement to qualify as a case of 'mass influx'. Within this vain, it could be concluded that the primary reason for the non-activation of the TPD between 2001-2014 is that "the numbers have not been reached"; that an influx of the magnitude that was triggered by the Kosovo crisis, or an influx of the size experienced by neighbouring countries of conflict zones (e.g. one million Syrian refugees in Lebanon) was not been observed in the EU.

However, the temporary protection mechanism, as conceived and laid down in Directive 2001/55/EC, was *devised for very specific situations of mass influx*. Muriel Guin (2001 in Marinho 2001:13) writes: "*un dispositif exceptionnel assurant, en cas d'afflux massif de personnes déplacées en provenance de pays tiers qui ne peuvent rentrer dans leur pays d'origine, une protection immédiate et de caractère temporaire a ces personnes, lorsque le système d'asile risque de ne pouvoir traiter ce flux sans provoquer d'effets contraires à son bon fonctionnement, à l'intérêt des personnes concernées et à celui des autres personnes demandant une protection*". Indeed, the 'mass influx' would have to result in a significant pressure on the national asylum system and, possibly as a consequence of the former, put at risk the protection needs and rights of those seeking international protection.

In view of the different scenarios that have to date confronted Member States with a significant increase in applications for international protection and caused pressure on the national asylum systems in terms of processing or reception and affected applicant's access to protection (see Annex 3), it is helpful that the TPD does not narrow down the concept of 'mass influx' and introduces a broad definition capturing different types. Hence, each of these possible cases of mass influx, as reported by the Member States, *could* in principle be investigated as to whether or not these merit the activation of the TPD.

Indeed, the idea was for the European Commission to (be given the opportunity to) "make a balanced assessment of:

- The situation in the Member States: Can all/some cope with the case load?
- Is the conflict likely to continue?
- To what extent is there a need to share the burden and if so how?"<sup>45</sup>.

The ultimate question is what are the effects that the gradual/sudden influx and/or evacuation programme has on the national asylum system(s) and the CEAS and on its commitment to ensure access to the asylum procedure and, where applicable, to international protection in line with international law and agreements. Muriel Guin (2001 in Marinho 2001: pg. 13, emphasis added) writes: "*Elle [La Commission] entend traiter une situation bien spécifique: celle de l'afflux massif de personnes déplacées, lequel peut déstabiliser complètement le fonctionnement du système d'asile e mettre à mal l'application des obligations internationales des Etats membres et, en particulier, de la Convention de Genève*". In assessing these effects, the Commission also takes account of the national measures and EU instruments that are available to these Member States

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<sup>45</sup> Interview with Commission official

under pressure to support them in dealing with the influx. For this remains an *exceptional* measure, that is only taken as a last resort.

In sum, the broad – or vague – use and definition of the term ‘mass influx’ in the Directive was to allow for the possible activation of the TPD in the context of different types of mass influx. However, in the absence of definitions of these different types of mass influx, and indicators on how to measure these, stakeholders agree that it has been hardly possible to attain Member State agreement on the (possible) activation of the TPD<sup>46</sup>. The different actors involved in the procedure may have (had) a different understanding as to what constitutes a large number of displaced persons, but also as to whether TPD is the most suitable mechanism to respond to it<sup>47</sup>. As such, it becomes a highly politicised and lengthy procedure, as is further elaborated in the next section (4.3), with little chance of attaining a qualified majority in the Council.

#### 4.2.2 “Arrival (spontaneous or aided) in the community”

The Directive is **not fully clear about the geographical scope of mass influx**. This is a **weakness** of the TPD, further generating disagreement among key stakeholders as to when this mechanism could be usefully applied.

The phrasing ‘arrival in the *Community*’ could indicate that the arrival must not be geographically limited to one Member State but should be understood as affecting the EU as a whole. However, it is clear from the hypothetical/future scenarios of an escalation of the Ukraine crisis and of mass influx in Cyprus in the wake of the IS conquering the sea border of Syria (for both see Annex 4 that the exposure to mass influx is often pure coincidental, i.e. depending on the country’s vicinity to the conflict hearth. As such, **one Member State** (e.g. PL for the Ukraine crisis) may function as the **gateway of the mass influx to the rest of Europe**.

That the TPD may have allowed for its activation in such an event, emerges from the reading of Article 2 (a). The latter refers to **a risk for the efficient operation of ‘the asylum system’**. As there is presently not one ‘EU asylum system’, but 28 different national systems, mass influx could here be understood as only affecting one Member State<sup>48</sup>. It would be very difficult to measure the pressure on all asylum systems in the EU, consequently setting the threshold to trigger the temporary protection procedure very high<sup>49</sup>.

Indeed, as noted in Chapter 3, during the negotiations, some Member States argued for a limitation of temporary protection to emergency situations of *collective* nature. However, this was rejected.

Therefore, **future amendments** to the TPD should clarify the geographical scope of mass influx. The terminology of “asylum system” should also be clarified, in terms of referring to the national asylum system of Member States or, within the ambition of the CEAS, to one European asylum.

Furthermore, Art. 2(d) refers to the ‘Arrival in the Community’ whether **spontaneous or aided**, e.g. via evacuation programmes. The inclusion of the reference to evacuation programmes stems from the evacuation programme that was implemented during the Kosovo crisis. Stakeholders agreed that the reference to “evacuation programmes” is a **strength** of the Directive, insofar as it could facilitate the legal and safe arrival of displaced persons (which, reference being made to the Mediterranean crisis constitutes

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<sup>46</sup> Interview with European Parliament, IOM, EASO and also cited in Member States replies to the survey

<sup>47</sup> Interviews with Commission officials, plus Member State responses to the survey.

<sup>48</sup> The possibility of such interpretation was also confirmed by Commission officials who stated: “The language in the Directive is not crystal clear and there is a margin of manoeuvre to argue that the activation of the TPD would be justified if only one Member State is affected”.

<sup>49</sup> Steve Peers, *EU Justice and Home Affairs Law*, third edition, 2011.

a key challenge)<sup>50</sup>. However, according to stakeholders<sup>51</sup> interviewed in early 2015, the likelihood of finding political agreement for the activation of an evacuation programme is in the current climate limited. Although not excluded, he stated that this would depend on political will and the emotion, media coverage, and the nature of the concerned conflict.

#### 4.2.3 Who come from a “specific country or geographical area”

The TPD stipulates that the influx must be from the same country or geographical area (e.g. due to a regional crisis). Cases of ‘cumulative influx’ from different geographical regions should not fall under the TPD.<sup>52</sup>

Of the criteria that need to be fulfilled in order to meet the requirements for temporary protection according to the Directive, **this and the following requirement (“unable to return to their country of origin”) appear to be the least contested ones.**

#### 4.2.4 Who are “unable to return to their country of origin”

According to Article 2(c), displaced persons from third countries who are unable to return to their country of origin covers nationals of third countries or stateless persons who have been forced to leave their own country and for whom return is impossible, including “persons who have fled areas of armed conflict or endemic violence, persons at serious risk or victims of systematic or generalised violations of their human rights”. Initially this was also a **strength** of the Directive as it was the **first legal instrument to broaden the narrow definition of refugee under the Geneva Convention** (see Chapter 3). In the absence of a (consistent) application of subsidiary protection at the time, this can be labelled as a strength as it covers a broad range of persons who will receive temporary protection.

**Future amendments** may consider whether or not the Directive may be further strengthened by clarifying how to determine whether a movement of displaced persons/the arrival of displaced persons primarily consists of those in need for protection. In this respect, the condition laid down in the emergency relocation mechanisms for Italy and Greece<sup>53</sup> (i.e. EU-average recognition rate of 75%) could be scrutinised (see Chapter 7).

The stakeholders consulted did not call for the amendment of this legal condition, e.g. by extending its scope to cover for a mixed migration influx. All stakeholders agree that **the pressures exerted on national asylum systems of some EU Members** (e.g. Belgium, Cyprus) **by “economic migrants” could not, and should not, be addressed through the temporary protection mechanism.**

Substantial evidence has been provided by stakeholders in the relevant Member States of the consequences that the arrival, reception and case review work of applicants for international protection, even when found manifestly unfounded, have for the national asylum system. For example, Cyprus (see Annex 3) referred to the extra cost of recruiting and employing additional case workers to process the backlog of applications, submitted by persons who do not qualify for international protection in 2003. This has a knock-on effect on the duration of the asylum procedure for applicants who do qualify for international protection. Cyprus also described the considerable costs for receiving these applicants while they await the outcome of their application. However, other national, EU and international instruments would have to be appealed to when Member States face challenges in relation to mixed migration flows.

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<sup>50</sup> Interview with IOM, European Parliament, DG ECHO

<sup>51</sup> Interview with DG ECHO, Director of Humanitarian and Civil Protection Operations, February 2015.

<sup>52</sup> *Commission Proposal 2000*, op. cit., Explanatory Memorandum, Commentary on Art. 2 (d).

<sup>53</sup> Council Decision on establishing provisional measures in the area of international protection for Italy and Greece, 3 September 2015.



#### 4.2.5 If there is a “risk” that the asylum system will be unable to process the influx without “adverse effects”.

The insertion of “in particular” and “a risk that the system will be unable to process” is not clear and has generated **debate as to whether the actual occurrence of adverse effects is a criterion** for the activation of the TPD.

Regardless of this being a criterion to activate the mechanism, the Directive is moreover also **not fully clear on the meaning of “adverse effects” and at what level these should be measured**. As previously mentioned, Art. 2 (a) refers to a risk for the efficient operation of “the asylum system”, leaving doubt as to whether reference is made to the national asylum system or the CEAS. The reference to adverse effects implies that what constitutes a mass influx must be defined in relation to the resources of a receiving Member State. In view of the differences between Member States in absorption capacity, each system’s knowhow and ability to cope with such influx, interpretation is highly arbitrary.

The unclear formulation is therefore a **weakness** of the TPD, which has resulted in disagreement among key stakeholders as to when the mechanism could be applied and constitutes **one of the reasons for its non-application**.

This can be illustrated by the debate that took place in the LIBE Committee on 26 February 2015<sup>54</sup> in response to a written question that the Member of Parliament Ms. Gardini had put to the Commission on 14 October 2014<sup>55</sup>. Ms. Gardini had asked the Commission whether it agreed that the legal conditions for triggering the TPD had been met in view of the Syrian conflict and ensuing crisis in the Mediterranean and, hence, a proposal to the Council had to be submitted. At the LIBE Committee meeting in February, Ms. Gardini commented that, in its response, “*the Commission has not responded to the question of what threshold should be reached in order for the arrivals of displaced persons within the Community to be judged as “mass influx”.*”<sup>56</sup> Indeed, a response that “the numbers have not been reached” calls, in the absence of a clear definition, indicator and method for calculating the indicator value, for the question: “What numbers *would* have to be reached?”

Similarly, with regard to the issue of ‘adverse effects’, the Commission replied, amongst other things, that “the asylum systems (e.g. Italy) are still working”, the “numbers arriving are still manageable”, that “Syrians have 98% positive decision rate” and “are treated properly”, and other EU support measures had been triggered (e.g. EASO), with the result that the CEAS “is coping”. This not only confirms that the Commission focuses on the subjective interpretation of mass influx (i.e. the effects of the mass influx) in its decision on whether or not to activate the TPD, but it also raises the question: “What adverse effects would have to be reached?” for activating this mechanism.

#### 4.3 Cumbersome and lengthy activation procedure influenced by political factors

The sections below demonstrate that the procedure to activate and implement the temporary protection mechanism is unclear, lengthy and cumbersome. Should the TPD be activated in the future, this may potentially undermine its very objectives, i.e. to *rapidly relieve* the pressure on national asylum systems affected by a mass influx of applicants for international protection and to provide *immediate* access to those

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<sup>54</sup> Minutes of the LIBE Committee – Dossier LIBE/8/020648

<http://www.europarl.europa.eu/committees/en/libe/minutes.html?ufolderComCode=LIBE&ufolderLegId=8&ufolderId=02648&linkedDocument=true&urefProcYear=&urefProcNum=&urefProcCode>

<sup>55</sup> Question for written answer, by Ms. Elisabetta Gardini (PPE), 14 October 2014.

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/libe/dv/10\\_e\\_008507\\_2014\\_question\\_/10\\_e\\_008507\\_2014\\_question\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/10_e_008507_2014_question_/10_e_008507_2014_question_en.pdf)

<sup>56</sup> Answer given by Mr Avramopoulos on behalf of the Commission on 28 January 2015

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-008507&language=EN>

applicants (in clear need of international protection). This represents **one of the main reasons why the TPD has never been applied to date.**

#### 4.3.1 Are the right actors involved?

In Chapter 3, it was noted that **the activation process can only be initiated by the Commission, either *ex officio* or upon request of a Member State.** The Member State's request only has to be examined, it does not oblige the Commission to submit a proposal to the Council to activate the mechanism. Article 5 (2) of the Directive describes in detail the content of the Commission's competence to such a proposal. Once the Commission has submitted its proposal, the Council can adopt a Decision to activate the temporary protection mechanism by qualified majority.

Is the role of the Member States appropriate? **The Commission has the monopoly to propose the activation of the mechanism**, i.e. the request of a Member State is the only source of information/evidence which the Commission has to examine before taking a discretionary decision to submit a proposal to the Council. It could be considered **a key problem that the Member States do not have the right to submit a proposal to the Council** – beyond the assessment of the Commission – to trigger the temporary protection mechanism.

Is, or should, there be a role for the European Parliament? The **European Parliament** does not play a role in the current procedure, but is **only informed once the Decision is adopted** (Article 5(5)). To date, some Members of the European Parliament have called for the Commission to present a proposal to the Council to activate the TPD, e.g. for example as done by Ms. Gardini in response to the Mediterranean crisis at the LIBE Committee on 26 January 2015.

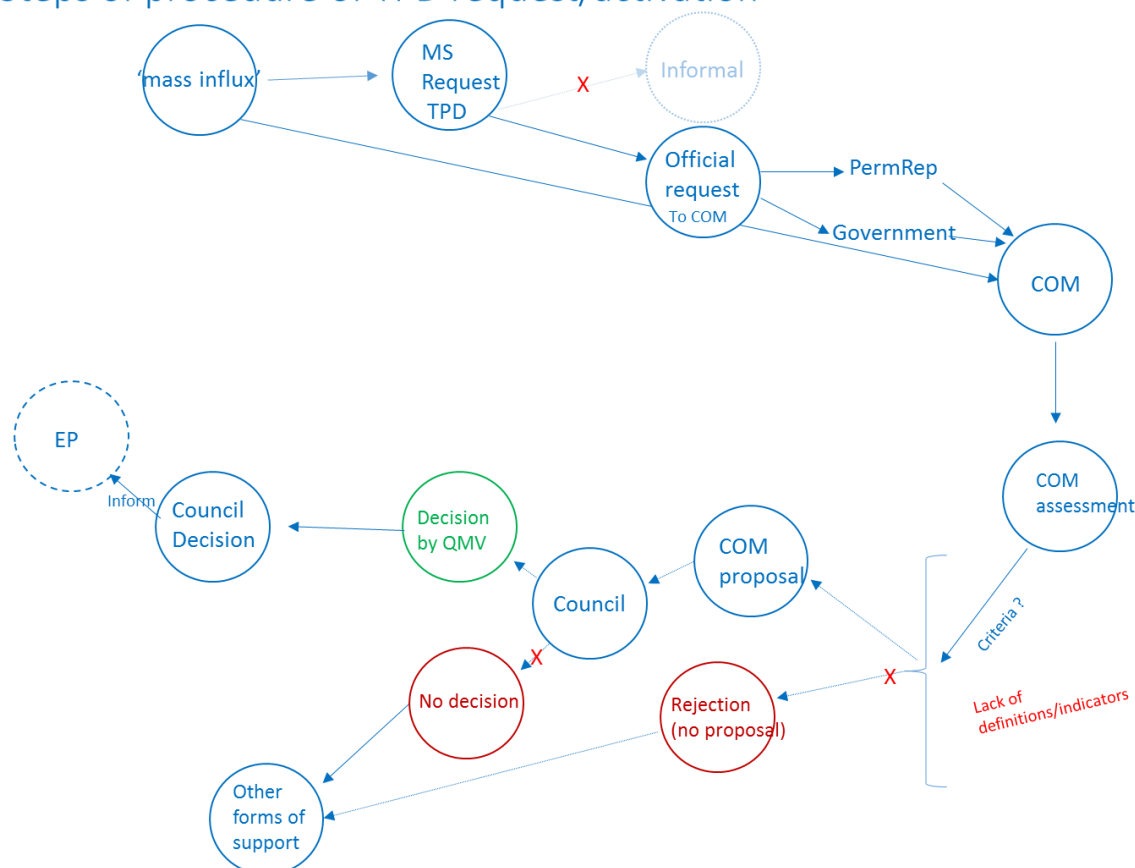
Article 78 (2) (c) of the TFEU, which would be the legal base for an *amended instrument*, does not foresee a role of the Parliament either. However, given that such an amendment would only be possible in accordance with the ordinary legislative procedure, i.e. that the European Parliament is given the same weight as the Council of the European Union, it is unlikely that a revised instrument could be agreed on without providing a strong role of the EP.

#### 4.3.2 The number of steps are high

The number of steps between the occurrence of a mass influx, potentially fulfilling the legal requirements to activate the TPD, and the implementation at Member State level are high. This has been visualised in Figure 2 below. This makes for a **lengthy procedure.**

Figure 2. Sequence of steps required to activate TPD

## Steps of procedure of TPD request/activation



### 4.3.3 The content of some of the steps are unclear

Furthermore, the Directive remains unclear on the content of some of these steps. This renders it a lengthy and ineffective procedure.

#### 4.3.3.1 The Member State request

With regard to the procedure, the **Commission emphasised that it should only examine a 'formal' request made by a Member State to activate the mechanism**<sup>57</sup>. Discussions regarding the potential triggering of the TPD within a closed meeting by one or more Member States are considered by the Commission and the external experts as mostly concerning an 'informal request'. However, also the **formal nature of the requests made to date** by Italy and Malta in the wake of the Arab Spring (2011) **was questioned by the Commission**, in spite of Italy and Malta confirming<sup>58</sup> that a letter was sent to the Commission. In particular, Malta reported having sent an official letter to the former EU Commissioner for Home Affairs (Ms. Malmström), while Italy reported having approached the European Commission through institutional channels (i.e. Council discussion and exchange of letter through the Permanent Representation).

**Future amendments to the TPD** should clarify the conditions that a request by a Member State should fulfil in order to be treated as "formal". External experts to this Study, as well as the Commission officials interviewed agreed on the following:

<sup>57</sup> Interview with Commission officials, DG HOME.

<sup>58</sup> MT provided this information in its survey response and follow-up interview; IT in its follow-up interview.

- **Communication mode:** Letter or email with electronic signature (as foreseen by the Vienna Convention);
- **Actors involved:** Letter to be directed to the Commissioner for DG Migration and Home Affairs, Mr. Avromopoulos, and sent by the appropriate actors from the Member State(s) requesting the activation (e.g. a specified "Focal Point"<sup>59</sup>);
- **Content:** Dossier, in which each of the legal requirements for triggering the TPD is examined and supporting evidence is provided (e.g. statistical data on the influx of displaced persons in one or more Member States; statistical data on the pressure this exerts on the reception system; on the processing of applications);
- **Language:** "We hereby request the activation of the TPD based on Art. 5 of Directive 2001/55/EC..."
- An Annex to the TPD could contain a **standard form** that the Member State(s) would have to complete and submit to the Commission to activate the TPD.
- It was also noted that, should several Member States be affected, **a joint request to activate the mechanism would be stronger**.

#### **4.3.3.2 The Commission's obligation to examine the request from the Member State**

The **Directive does not stipulate the obligations of the Commission upon receiving a request by a Member State** beyond "assessing" the request and "deciding" whether or not to put forward a proposal to the Council (Art.5). Commission officials and the external experts consulted in this study do however agree that the Commission has the obligation to respond. This means that the Commissioner has to submit the Member State request to the College with a recommendation of her/his own, based on an assessment by the service of whether the legal requirements are fulfilled<sup>60</sup>. The College subsequently has to decide whether or not to put forward a proposal for the activation to the Council. If applicable, a well-motivated response to not activate the TPD should be sent to the Member State.

It appears that this formal procedure was not adopted by the Commission in response to the two Member State requests to activate the TPD which were made between 2001 and 2014, i.e. by Italy and Malta in 2011. This conclusion is based on anecdotal evidence, as the Study Team was not able to identify a paper trail within the Commission following the requests.

**Future amendments to the TPD** should further specify the above mentioned obligation(s) that the Commission has upon receiving a Member State request to activate the TPD. This is key if the Commission maintains the exclusive right to propose the activation of the mechanism (i.e. gatekeeper) (see comments in Section 4.3.1).

#### **4.3.4 The political discretion is too high**

Furthermore, **in the absence of a clear** definition of the **criteria** for activating the mechanism and tools to measure these (in particular: definition and indicators for "mass influx" or "adverse effects" on the asylum system – see section 4.2, the procedure to activate the TPD is subject to, and ultimately hampered by, political debates at each stage of the procedure. At **each step of the procedure**, the decision to request (the Member State), to propose (the Commission) and to establish (the Council) a case of mass influx warranting the activating of the TPD **becomes a political exercise – a debate of subjective interpretations** – rather than a mere technical analysis of whether the conditions have been fulfilled (i.e. a "tick box"-exercise).

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<sup>59</sup> As suggested by an external expert.

<sup>60</sup> Interview with COM official

This is illustrated by the discussions that took place in response to the requests by Italy and Malta in 2011 and to the requests by Members of Parliament (e.g. see discussions held in the LIBE Committee on 26 February 2015, as mentioned in Section 4.2.5 **the interpretation** of what constitutes mass influx and adverse effects on the asylum system **differs significantly**).

In sum, this indeed makes for a **potentially lengthy and cumbersome procedure**.

#### **4.4 Solidarity principle, based on dual volunteerism**

**One of the greatest strengths of the TPD** is that it **foresaw an in-built form of solidarity mechanism** "to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx" (Preamble)<sup>61</sup>.

##### **4.4.1 The principle of solidarity**

At the outset of this Study (i.e. early 2015), **the TPD was "still the only Directive that foresaw an in-built binding, voluntary form of solidarity mechanism"**.<sup>62</sup> As such, she continued, it is "a strange animal" within the set of first and second generation legislative instruments of the CEAS; it is the only instrument that foresees a "mechanism to discuss the sharing of the case load among EU Member States". However, the essentially voluntary nature of the solidarity mechanism is a critical weakness of the TPD.

Indeed, the 2013 **Dublin Regulation III**, which is at the basis of few transfers of applicants for international protection within the EU, was **"not designed as** an instrument to distribute applicants between the Member States, in proportion to each Member State's capacity to receive applicants (i.e. **a so-called "burden sharing" mechanism**). However, in the absence of any such "burden sharing" instrument, the Dublin system has become *"de facto"* the instrument allocating applicants between Member States"<sup>63</sup> on the basis of a hierarchy of criteria. The latter do not include an equitable distribution within Member States, in proportion to each Member State's capacity to receive applicants. Furthermore, the Dublin III Regulation – in its current format – does not provide for a derogation of the method and criteria for allocating an application for international protection to a single Member State.

More recently, in response to the ensuing refugee crisis, the **commitment to solidarity and burden-sharing between Member States** has gained **greater momentum and support**. In its EU Agenda on Migration (27 May 2015), the Commission acknowledged the unprecedented pressure on frontline Member States and their reception and processing capacities. The Commission subsequently proposed to trigger the **emergency response system envisaged under Article 78(3) of the TFEU** via a temporary and emergency relocation mechanism for persons in clear need of international protection. On 9 September 2015, it also put forward a proposal to establish a permanent **crisis relocation mechanism**, amending the Dublin III Regulation, **under Article 78(2)**. In the not too distant future, the TPD may therefore be accompanied by one or more EU instruments fostering burden-sharing when mass arrivals of those in need of protection put national asylum systems under strain.

**Future amendments to the TPD** should **duly take account of the role of the new/proposed measures vis-à-vis the TPD in case of mass influx**. The study team does this in Section 7 of the report, where further details on the content and state of play of these proposals are also provided.

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<sup>61</sup> There is consensus amongst the stakeholders that this is one of the key strengths of the TPD, see e.g. interview with Commission officials, IOM, an external expert, UNHCR.

<sup>62</sup> Interview with Commission official

<sup>63</sup> Terms of Reference, DG Migration and Home Affairs, Dublin Regulation III evaluation

#### 4.4.2 The organisation of redistribution, as laid down in the TPD

Having recognised the key strength of the TPD as including a burden-sharing mechanism, the study team has noted that some of its features may hamper the TPD's scope for effective and efficient implementation of solidarity among EU Member States<sup>64</sup>.

As explained in Chapter 3, the TPD foresees that, upon its activation, financial solidarity via the AMIF and solidarity in terms of physical reception based on the rule of "double voluntarism" would be applied. It is this second component that desk research and stakeholder consultation indicate to have serious shortcomings, which may ultimately undermine the objective of the TPD to secure a balance of effort between Member States<sup>65</sup>.

The hypothetical/future scenario of an escalation of the Ukraine crisis (see Annex 4) demonstrates that, firstly, the expectation that Member States indicate capacity is problematic without common criteria to calculate or project reception capacity. This may not only lead to Member States declaring that they are unable to receive beneficiaries, but also to disagreement between Member States and disputes within the Council as to the factual – but also ideal – capacity of each Member State. This slows down, but may also compromise, the prospect of an equitable burden-sharing<sup>66</sup>.

Secondly, the Ukraine scenario also shows that the principle of 'double voluntarism' may stall the redistribution of beneficiaries across the EU and ultimately undermine the pursuit of greater solidarity, laid down in the Directive. While the principle to consider the preference of the applicant is "laudable", in practice, however, this would result in some Member States receiving greater preference than others. In the absence of the *implementation* of common standards of international protection, some Member States (are considered to) offer more generous reception systems, easier access to the labour market or with a considerable diaspora / different diaspora communities.

If in this respect, it would be useful for *future amendments* to the TPD should duly take account of, and learn from, the organisational principles of the emergency relocation schemes (based on Art 78(3)) and of the crisis relocation mechanism (based on Art 78(2)) (e.g. use of Hotspots to register applicants; distribution key; facultative/mandatory redistribution to Member States) and any findings regarding its activation, implementation and evaluation, where applicable.

#### 4.5 A fair and adequate level of protection of rights, but potentially unattractive to Member States

A clear strength of the TPD is that it **establishes minimum standards for granting temporary protection** in the event of a mass influx of displaced persons. This objective of the Directive is outlined in the Preamble (8) and Chapter III of the Directive sets out the obligations that Member States have towards persons enjoying temporary protection.

The TPD hereby **responded to the need for harmonising the granting of temporary protection**, which emerged from how Member States reacted to the influxes following the Yugoslav wars and Kosovo crisis in the 1990s. In Chapter 3, the study team demonstrated that, not only did some Member States grant *temporary* protection to arrivals from those (and other) conflict areas, but these national forms of temporary protection also significantly *differed* in terms of status, duration, rights, etc.

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<sup>64</sup> As also argued by stakeholders, see e.g. interview with Commission officials, an external expert, EASO, IOM.

<sup>65</sup> See e.g. Meltem INELI-CIGER (2015). Temporary Protection in International Law and State Practice. PhD Thesis, University of Bristol Social Science and Law Faculty, p. 230, as well as interviews with Commission officials, European Parliament, an external expert, EASO, IOM.

<sup>66</sup> Meltem INELI-CIGER (2015). Temporary Protection in International Law and State Practice. PhD Thesis, University of Bristol Social Science and Law Faculty, p. 230, 231.

and could be argued to have fallen short of respecting international standards of protection.

Hence, **from the perspective of persons enjoying temporary protection** in the event of a mass influx of displaced persons, the TPD succeeded in **determining the Member States' obligations as to the conditions of reception, residence and rights**. In line with the objectives outlined in Preamble 10, these obligations can be considered "fair" and "offering an adequate level of protection to those concerned". Indeed, the rights laid down in Articles 8 to 16 of the TPD largely mirror those stipulated later on in the first and second generation legislative instruments of the CEAS (in particular: the Qualification Directive). This view was confirmed by the stakeholder consultation of this Study<sup>67</sup>.

In particular, the immediate right for beneficiaries of temporary protection to "engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience" (Art. 12) stands out<sup>68</sup>. Given that the duration of the temporary protection can be extended up to three years, it is key that beneficiaries have access to work and can secure their own means of subsistence.

**From the perspective of the Member States**, the establishment of minimum standards recognises that differences between Member States impact on refugee movements. Indeed, the Preamble to the TPD (9) considers these minimum standards **to avert the risk of secondary movements**.

Stakeholders consulted in this Study<sup>69</sup> did however note that **the level of rights may constitute an argument for Member States not to support the activation of the TPD, i.e. a potential weakness**. The implementation of these rights, considered generous vis-à-vis the more limited set of rights incorporated in national temporary protection regimes, may be **costly** to the Member State.

**From the perspective of the EU**, establishing minimum standards constitutes a **strength** of the TPD as it secures adequate levels of protection across the CEAS and partly prevents secondary movements within the EU. **But the Commission needs to follow-up with Member States for incorrect transposition of the rights** as laid down in the TPD. In this respect, **future amendments** to the TPD should take account of the "new systematic monitoring process, to look into the implementation and application of the asylum rules and foster mutual trust" and greater attention to infringement procedures announced in the EU Agenda on Migration.

#### **4.6 In the absence of activation, the objective to harmonise TP is undermined**

While the harmonisation of the granting of temporary protection across the EU was an objective of the TPD and has, on paper, been successful, the reality is quite different. Both the literature review and the stakeholder consultation conducted by the study team has unveiled that:

Some Member States **continue to grant forms** of protection that, in terms of their nature, could be considered as functional equivalents **of temporary protection** regimes (e.g. DE, UK – see Chapter 3). In DE, the *relevant law establishing this regime even refers to the TPD without it having been activated* (§ 23, Paragraph 2, AufenthG);

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<sup>67</sup> See for example interview with Commission official, DG HOME and an external expert.

<sup>68</sup> Interview with Commission official, DG HOME.

<sup>69</sup> Interview with Commission official, with an external expert, and Members of the European Parliament.

**Other** Member States **are considering to grant temporary protection** *even in the absence of the activation of the TPD*, should mass influx occur (e.g. PL stated this in the follow-up interview, in case the Ukraine conflict would have further escalated).

**These national forms of temporary protection continue to differ significantly among Member States.**

Hence, *de facto* the harmonisation of the temporary protection across the CEAS has not been attained, in the absence of the activation of the TPD.

**Future amendments** *to the TPD* should take this into account.



## 5 Pressures on the EU in the period 2001-2014 and the reasons for non-implementation

- As per the Terms of Reference, this chapter analyses the reasons for the Directive's non-implementation on the basis of practical scenarios where the Directive could have been or could not be triggered. Rather than categorising the scenarios in cases where the legal requirements were/were not fulfilled (as required by the TOR), the chapter uses inductive-reasoning and:
- Presents an overview of situations of pressure, investigating whether a "possible" case of mass influx of displaced persons has occurred, and if so;
- Analyses what happened in the absence of the application of the TPD (counter-factual).

Both the analysis of the scenarios and the counter-factual (section 5.1) in combination with the analysis on the TPD's strengths and weaknesses (Chapter 4) subsequently feed into understanding the reasons for the Directive's non-implementation (section 5.2).

For the identification of different scenarios of pressure, the Study Team initially selected possible cases on the basis of: Eurostat data; emergency financial assistance under the ERF/AMIF; operational support received from EASO, as well as; Member States' self-reporting in the "EMN Study on the Organisation of Reception Facilities for Asylum Seeker in the different Member States". Subsequently, in the Survey, Member States were asked to confirm the situations selected by the Study Team as cases of pressure/mass influx, and in addition, were also asked to self-report on any other case(s) of pressure/mass influx they may have experienced between 2001 and 2014. Based on the Survey results, the Study Team selected, in consultation with the Commission, a total number of 12 case studies (Belgium, Bulgaria, Cyprus, France, Germany, Greece, Hungary, Italy, Malta, Netherlands, Poland, Sweden). The main aim of these case studies was to: i) identify which Member States had experienced pressure and what type of pressure; ii) what measures were used to address these and with what impact, and finally; iii) to explore if, given the national and EU measures applied, the TPD could have provided any added-value. A summary of the results and an analysis of the case studies are presented below, followed by a summary of the reasons for the Directive's non-implementation.

### 5.1 Pressure on Member States in the period 2001-2014

The case studies (as presented in Annex 3) show that the national asylum systems of several Member States experienced pressure in the period 2001-2014. The Study Team discerned three different types of pressure:

- Pressure due to a **significant high** and/or **sudden increase** (BG, CY, PL, MT);
- Pressure following a **gradual increase** (BE, FR, DE, NL); and
- Pressure due to **strong fluctuations** in the number of applicants over time (EL, IT).
- These different types of pressure are discussed, in turn, below.

#### 5.1.1 Pressure due to a significant high and/or sudden increase

Under the first scenario, **Bulgaria** (2013-2014), **Cyprus** (2003-2004), **Malta** (2011) and **Poland** (2007, 2009, 2013) were confronted with a significant high and sudden increase in the number of applications for international protection in one or more time periods. Whereas the pressure was of short duration in Cyprus, Malta and Poland, the increase in Bulgaria persisted throughout 2013-2014.

In **Bulgaria** the number of applications for international protection rose from 1,385 in 2012 to 7,145 in 2013, which constituted an increase of 416%. The number of

applications continued to increase in 2014 to a total number of 11,081. As such, the number of asylum applications grew more than four-fold between April and December 2014. A high share of the increase originated from Syrian applicants for whom the total number of applications increased from 110 in July 2013 to 1,040 in November 2013. Bulgaria reported that the significant rise of applications for international protection resulted in much pressure exerted on its national asylum system and created "serious difficulties". A representative from the Ministry reported that the "Bulgarian system for asylum was unable to cope". Reception centres were overcrowded to an extent that caused an institutional collapse of the State Agency for Refugees (SAR). Indeed, UNHCR in its observations on the situation in Bulgaria concluded that asylum seekers in Bulgaria faced a real risk of inhuman or degrading treatment due to systemic deficiencies in asylum procedures and reception conditions.

**Malta** experienced a substantial increase in the number of applications in 2011 in a short period of time. The number of applications rose from 30 in March 2011 to 1,125 (mostly Eritreans and Somalians) in April 2011, an increase of 3,650%. Numbers dropped to 355 applicants in May 2011 and remained under 100 per month for the rest of the year. Malta indicated that the high influx posed serious strains both on the reception capacity and functioning of infrastructures available. Also, the staff to process the number of applications was considered insufficient.

In **Poland** the number of applications have fluctuated with three sudden and steep increases in 2007, 2009 and 2013. In December 2007, Poland experienced a relative increase of 100% in comparison to November 2007, and further relative increases of 38% in August 2009 in comparison to July 2009, and 50% in May 2013 in comparison to April 2013. This sudden influx mainly consisted of Russians, i.e. 99% of applications in December 2007 and 96% in May 2013. In August 2009, the main groups seeking asylum in Poland were Georgians (67%) and Russians (31%). Despite this steep rise in the number of applications for international protection on three occasions, the Polish reception and asylum systems did not once experience substantial pressure, as Poland is primarily used as transit country. For example, in 2013 more than 75% of applicants withdrew from the asylum procedure.

**Cyprus** experienced a relative increase of 363% in December 2003 in comparison to October 2003 and 374% in the same period in 2004. In both years, figures dropped drastically the month after, to 220 in January 2004 and 890 in January 2005. In the months presenting the biggest peaks (December 2004 and 2005, June 2005) applicants were of a mixture of nationalities (e.g. Bangladeshi, Georgian, Pakistani, Ukrainian, Syrian, Iranian, Russian and Indian). Cyprus reported that the influx resulted in pressure, mainly on the processing of applications which resulted in a significant backlog of asylum decisions. Cyprus also experienced pressure on its national budget as it provided an accommodation allowance, in order to prevent the occupancy rate of reception facilities from reaching 100% or more.

### **5.1.2 Pressure following a gradual increase**

Under the second scenario, **Belgium, France, Germany and the Netherlands** experienced pressure on their national asylum systems following a gradual surge in applications. Whereas in Belgium and France the volume rose gradually over several years, in Germany and the Netherlands the gradual increase occurred in particular since 2013 (Germany) and 2014 (Netherlands).

In **Belgium** the number of applications for international protection increased from 15,940 in 2008, and doubled in three years, i.e. to 32,270 in 2011. Applications originated from various countries of origin (e.g. Russia, Afghanistan, Kosovo, Serbia, Iraq, Guinea etc.) From mid-2008 to beginning 2012 Belgium faced a significant reception crisis, with more than 12,000 applicants who could not be accommodated between end 2009 and beginning 2012. Existing facilities worked with surplus capacity

and many applicants were accommodated in low-cost hotels or in emergency structures. The body responsible for organising reception in Belgium, i.e. FEDASIL, was also condemned several times by the Labour Court which instructed FEDASIL to pay fines to applicants for international protection who could not be accommodated.

In **France** the number of monthly asylum applications steadily climbed from 29.000 in 2007 to 64.000 in 2014. The largest annual increase was from 2007 to 2008 when 43% more asylum applications were registered and the largest monthly increase was from September to October 2012 when 35% more applications were registered (rising from 4, 630 to 6,260). Applications originated from various third countries (e.g. Russia, DR Congo, Kosovo, Sri Lanka and Bangladesh). The gradual surge brought about **delays** in the procedure for international protection and a **saturation** of the accommodation system and, as a result, an increase of applicants accommodated in **emergency facilities**.

In the **Netherlands**, a surge in applications for international protection has been observed mainly since 2014. The total number of persons who lodged an application for asylum in 2014 amounted to 24,530, representing an 87% increase in comparison to 2013 when it received 13,085 applications. This rising trend continued in 2015. Overall, the largest number of asylum applicants were from Syria. Consequently, the Netherlands experienced a lack of reception capacity; existing facilities became overcrowded and some applicants were accommodated in temporary reception facilities which, according to the survey, "did not meet the quality standards of existing reception facilities". Moreover, there was also a sharp escalation in the number of pending cases, which almost tripled in 2014 in comparison to 2013.

**Germany** has experienced a substantial increase in the number of applications since 2013. Overall, the number rose from 127,033 in 2013 to 202,834 in 2014 which amounted to a 95.7% increase over the period March-November 2014. Applicants for international protection primarily originated from the Western Balkans, Syria and the Russian Federation. Germany reported difficulties in responding to the influx; reception capacity was insufficient which led to overcrowding in some centres and the number of pending cases also increased.

In **Sweden** the number of applicants gradually rose from nearly 30,000 in 2011 to 44,000 in 2012, 54,000 in 2013 and 81,000 in 2014. By far the largest number of applicants in 2013 and 2014 were from Syria, followed by Eritreans. Despite the influx, the Swedish Migration Agency reported not to have experienced pressure and its ability to handle the increased numbers remained intact.

### **5.1.3 Pressure due to strong fluctuations**

Under the third scenario, Greece and Italy experienced strong fluctuations in the number of applications received during the period 2001-2014.

For **Italy**, the total number of asylum applicants remained under 10,000 for all years between 2001 and 2010, except 2008 when the figure reached 30,000. However, in 2011 the number of asylum applicants increased fourfold compared to 2010 (40,000 from 10,000 in 2010), which then subsequently went down 17,000 in 2012 and 27,000 in 2013. The year 2014 again saw a massive increase to 65,000. The sudden and high influx posed serious strains both on **the national reception system as well as on the processing of applications**. Reception facilities were overcrowded. In 2011, Italy had around 5,516 places in governmental reception facilities, to which around 4,000 (precisely 3,979) could be added from the SPRAR (Protection system for asylum seekers and refugees). However, this represented a total of less than 10,000 places against a number of landings nearly four-fold higher (62,692).

For **Greece** the total number of asylum applications hovered between 5,000 and 10,000 for most of the 2001-2014 period, but reached 12,000 in 2006, 16,000 in 2009, 20,000

in 2008 and peaking in this period in 2007 with 25,000 applications. When confronted with the increase in applications starting in 2006, it became clear, very quickly, that Greece had **insufficient reception capacity**, insufficient staff and inadequate procedures, which not only led to **overcrowding** but overall **very poor reception conditions** in accommodation centres (threatening the fundamental rights of applicants) as well as **lengthy procedures** and a **significant backlog in asylum cases** (estimated in 2011 at 46,000 cases). Numerous reports from international organisations, NGOs, lawyers and individuals confirm the aforementioned<sup>70</sup>. Moreover, a number of judgements of the European Court of Human Rights<sup>71</sup> had also condemned Greece for failing to respect the fundamental rights of migrants, including applicants for international protection. These judgements underlined the existence of inhumane detention conditions, cases of applicants becoming homeless and destitute, as well as an impeded access to an effective remedy against detention decisions<sup>72</sup>.

## 5.2 Management of the situation

### 5.2.1 Development of alternative measures to deal with situations of pressure

A variety of measures were implemented at both national and/or EU level in response to the pressures as described above. In this respect, it is important to note that since 2001, several Member States' asylum systems have significantly evolved, including a surge in and subsequent consolidation of experience and knowhow on how to deal with situations of pressure. Moreover, at EU level, the legal and political context in the field of asylum has significantly changed (e.g. adoption of first and second generation legislative instruments, ERF/AMIF and establishment of EASO) including also the tools available at EU level that aim to assist Member States in handling large influxes. Of particular relevance are the following measures that aim to complement and strengthen response capabilities of Member States:

- **Emergency funding** under the ERF/AMIF to address "sudden arrivals of large numbers of persons";
- **A mechanism for early warning, preparedness, and crisis management (Article 33 Dublin Regulation)**: the mechanism for early warning, preparedness, and crisis management aims to detect, at an early stage, deficiencies and/or situations of pressure in national asylum systems and ensures that plans are drawn up by the concerned Member State to avert any further deterioration in, or collapse of, the asylum system. The mechanism involves two stages: preparedness and crisis management. Under the preparedness phase, the EU can request Member States to draw up a 'preventive action plan'. Under the crisis management phase (which concerns a more serious situation where an emerging problem has evolved into an actual 'crisis'), the EU can issue a compulsory order to the affected Member State to draw up a crisis management action plan within three months.
- **EASO (operational) support**: linked to the early warning, preparedness, and crisis management mechanism under Art. 33 of the Dublin Regulation, EASO is developing an Early Warning and Preparedness System (EPS) under which it aims to collect accurate information on, and analyses of, the flows of asylum seekers into and within the European Union, and Member States' capacity to manage them. EASO's EPS thus forms the information base for the mechanism for early

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<sup>70</sup> The reports include, inter alia, an opinion of the Greek Ombudsman, reports by Human Rights Watch, a follow up report by the Pro Asyl group, a report by Thomas Hammarberg, Council of Europe's Commissioner for Human Rights, a report by the Austrian Red Cross and Caritas Austria and submissions by the Greek Group of Lawyers for the Rights of Refugees and Migrants. See SWD (2014) 316 Final.

<sup>71</sup> M.S.S v. Belgium and Greece case

<sup>72</sup> SWD (2014) 316 Final, Commission Staff Working Document on the Assessment of the implementation of the Greek Action Plan on asylum and migration management

warning, preparedness, and crisis management foreseen under Article 33 of the recast Dublin Regulation. EASO subsequently has various tools at its disposal to support Member States to: i) better *prepare* Member States to face changing flows of applicants, e.g. training, COI, quality tools, and support on analysis and implementation of EU legislation (preparedness phase) and ii) provide *operational support* to Member States facing “particular pressure”, e.g. the deployment of Asylum Support Teams (crisis management phase).

- **Relocation** of beneficiaries of international protection (e.g. EUREMA<sup>73</sup>)

### **5.2.2 What measures have Member States made use of both at national and EU level in response to the situations of pressure?**

At national level, Member States de facto made use of various measures that can be sub-divided into those aimed at prevention, mitigation and response. Examples of measures include:

- Prevention: projections/risk analyses/prognoses (DE, NL); emergency plan (FR, NL, PL); buffer capacity (BE, DE, NL);
- Mitigation: early warning system (NL, FR); mechanisms to speed up the decision-making process e.g. hiring more case workers and/or fast-tracking certain types of applications (BE, BG, CY, DE, FR, MT, NL); budget flexibility (BE, DE, FR, NL); provision of accommodation allowance instead of accommodation in centres (CY, PL);
- Response: building new facilities (BE, DE, FR, NL) and/or emergency structures (BE, DE, FR, NL).
- In addition, Belgium also developed a particular strategy to respond to pressure which consists of treating reception as a chain from inflow, reception, procedure, outflow, to return/regular stay, thereby addressing every part of the reception/asylum system to avert a reception crisis.
- At EU level, the following measures were activated to assist Member States in handling pressure:
- Emergency funding (BE, BG, DE, EL, FR, IT, MT, NL);
- EASO operational support (BG, CY, EL, IT, SE); and
- Relocation of beneficiaries of international protection through the EUREMA project (MT).
- Further details on these measures are described in the case studies in Annex 3.

### **5.2.3 Different approaches in handling situations of pressure**

When comparing the type of measures implemented across Member States, it may be noted that Member States have different approaches in handling a situation of pressure. It seems that the “older” Member States (e.g. BE, DE, FR, DE, SE), with well-developed asylum systems, implemented more extensive national measures covering prevention, mitigation and response in comparison to the “newer” Member States. For example, for *prevention* purposes, the reception facilities in the Netherlands operate on a more-beds-available than needed basis; a monitoring system monitors the inflow and/or stock of applicants and risk analyses are conducted to manage the accommodation capacity in

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<sup>73</sup> EUREMA was a pilot project for intra-EU relocation from Malta. It provided an organised framework for preparing and implementing relocation, in order to assist Malta in coping with the pressures of hosting a relatively large number of recognised beneficiaries of international protection. The pilot project had two phases: phase I (2011) and phase II (2012). For further information please see, for example: <https://easo.europa.eu/wp-content/uploads/EUREMA-fact-finding-report-EASO1.pdf>

the medium/long-term. When confronted with pressure from 2014 onwards, the Netherlands implemented several measures to *mitigate* the negative effects: e.g. it increased its budget, hired more case-workers, fast-tracked procedures of Syrian applicants and implemented further measures to facilitate a more rapid outflow from reception facilities. Finally, to *respond* to the persistent pressure, temporary and new reception facilities were constructed. Similar measures were also implemented by France, Germany and Sweden. At EU level, these Member States exclusively requested emergency funding to finance the organisation and implementation of *national* measures. Their approach reflects the idea that primary responsibility for planning, preparing and responding to a crisis rests with Member States. Indeed, during the follow-up interview, a representative from Germany explained that it was considered their national responsibility to handle the large influx. EU financial support was welcomed, but only insofar as it enabled the financing of national measures.

In contrast, it seems that the “newer” Member States implemented fewer national measures and more rapidly had recourse to EU support measures beyond emergency funding. For example, in Bulgaria national measures included the recruitment of extra case-workers and the establishment of two new reception facilities. Crucially, at EU level, Bulgaria was granted 5.6 EUR financial emergency assistance, EASO operational support as well as structural capacity-building support. For this purpose, a Special Support Plan was signed in December 2014 which stipulates continued EASO support to Bulgaria until June 2016. Bulgaria reported that the support provided by EASO was much required not only to deal with the emergency situations but also to help improve the national reception and asylum system in general.

### 5.3 Could the TPD have provided added-value?

The overview of scenarios indicates that several Member States experienced significant pressure on their national asylum systems in the period 2001-2014 which threatened standards regarding the quality and timeliness with which applicants are received and have their claim processed. However, the degree to which such pressures on the national asylum system resulted in effective lowering of standards and, in the worst case scenario, the system breaking down was dependent on Member States’ capacity and knowhow on how to deal with a situation of pressure. This capacity, expertise and knowhow varies significantly across Member States and is also reflected in the different approaches of Member States in handling pressure situations (see section 5.2.3). Indeed, following EU enlargement, some of the new Member States found themselves on the external borders of the EU and were – often for the first time – exposed to refugee movements, but also mixed migration flows, directed towards the EU. As asylum systems are interdependent, the entire CEAS can be exposed to pressure as an overburdened system of one Member State can have spill-over effects to other Member States, including via secondary movements.

At the same time, however, several measures were developed at EU level that aim to assist Member States in handling pressure (e.g. emergency funding, the early warning and preparedness mechanism, EASO operational support etc.). Moreover, some Member States’ national asylum systems (notably the “older” EU Member States) have also evolved, having acquired experience and knowhow on how to deal with situations of pressure. As such, the arsenal to respond to situations of possible mass influx both at national as well as EU level has significantly improved since 2001.

The development of alternative measures, in combination with the inherent weaknesses in the TPD (i.e. absence of a clear definition of the criteria and an unclear, lengthy, and cumbersome procedure – see Chapter 4) has meant that **there was no clear-cut case for the activation of the TPD**. In response to the situations of pressure as experienced in 2001-2014, preference was given to alternative measures both by the Commission as well as Member States. The Commission for example explained that: “The TPD was never considered the right instrument to use. At the time of the Arab Spring in 2011, it

was our feeling that the TPD would not have really helped the situation; applicants were treated fairly well, and were given a protection status, usually relatively quickly". Several Member States (e.g. CY, MT) similarly commented that, had the TPD been activated, it would probably not have added any value as the activation process would have taken too long. Despite requests from Italy and Malta for the activation of the TPD, it seems that such requests were partly also used as political leverage for the provision of alternative measures<sup>74</sup>.

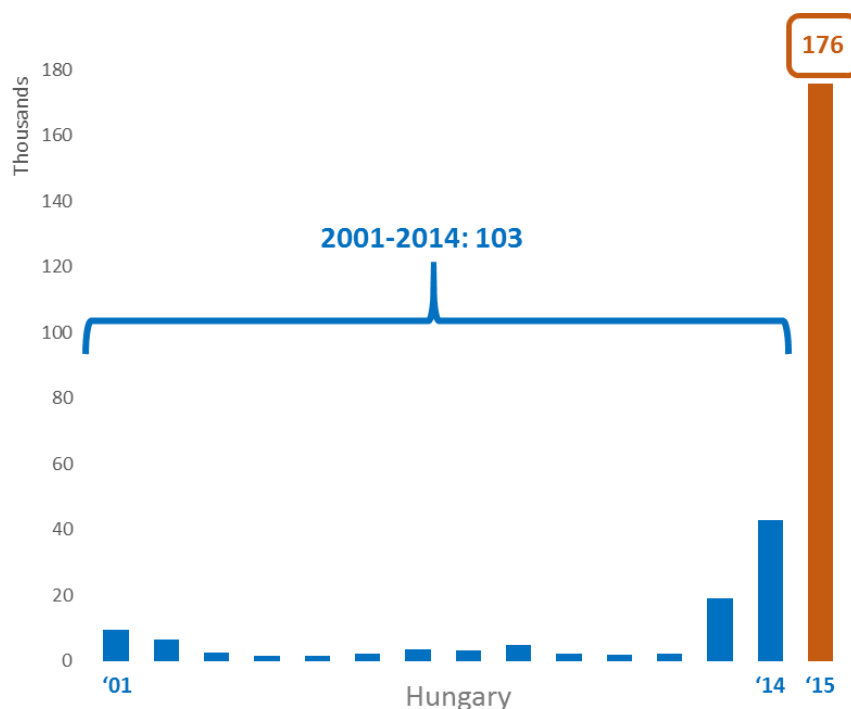
Although national measures, EU emergency funding and EASO operational support have undoubtedly assisted Member States to cope with the pressures of increased arrivals during the period 2001-2014, some tools have not been used to their full capacity (e.g. relocation) or were not used at all (e.g. Art. 33 Dublin). More crucially, concern remains that the sum of the parts in the 'tool box' does not add up to a coordinated, coherent, and comprehensive response. Had the TPD been activated this would have exactly been its added-value; the provision of a coordinated EU response, providing immediate protection to those in need (potentially also facilitating legal access to the EU), preventing the blocking of national asylum systems and promoting the balance of efforts across Member States.

In fact, the need for a coordinated EU response has especially become clear in the current migration/refugee crisis. Whereas there was no clear-cut case for the activation of the TPD in 2001-2014, it seems that some Member States in 2015 are without doubt experiencing a "mass influx", even in the absence of a set of agreed indicators for measuring 'mass influx' and 'pressure' by, as illustrated in Figure 3. This figure provides an overview of the number of asylum applications in Hungary, comparing the period of 2001-2014 to the 2015. It shows that in Hungary, the number of asylum applicants has increased significantly from 2012 to 2013 and again in 2014. However, in 2015 the number of applicants is unprecedented and already over 175,000. Its 2015 influx is higher than the entire period 2001-2014 combined.

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<sup>74</sup> During the follow-up interview, Malta acknowledged that it did not think the TPD would have added any value. Nevertheless, activation was still requested.

Figure 3. Number of asylum applications in Hungary, comparing 2001-2014 and January to September 2015.



Source: Eurostat

For several other Member States the influx of persons arriving is also extremely high (such as for Greece, Croatia and Slovenia) but this has not (yet) translated itself into similarly high numbers of asylum applications. For other Member States, such as Germany, Sweden and Austria and Italy, the 2015 figures are close to 300,000, 80,000, 60,000 and 60,000 respectively, unprecedented when compared to 2001-2014 though not higher than the combined total of the entire period 2001-2014. The forecast is that the end-of-year total of asylum applications will be very high, and could indeed be considered 'extraordinary' or 'massive' in some or several cases.

Rather than activating the TPD (given its weaknesses), the situation has prompted a series of proposals by the Commission (see Chapter 7), which have further implications for the continued relevance of (a possibly amended) TPD, as also described in Chapter 7.

#### 5.4 Reasons for the non-implementation of the TPD

The aim of this final section is to describe the reasons that may have hindered the activation of the TPD. While the weaknesses inherent to the TPD (addressed in Chapter 4) may have represented the main causes for which Member States and the EU have opted to tackle emergencies/pressures on their own or with other forms of support, evidence collected suggests that other elements are worth being highlighted too. Most of them echo political arguments flagged by Member States and are interlinked and/or influence one another.

- In the survey and the follow-up interviews, most Member States which had experienced pressure on their national system between 2001 and 2014 reported – and at times, underlined – that **internal responses** and, where provided, **EU-level support sufficed** in relieving the pressure on reception and the asylum procedure (see also section 5.2).



- At present, the decision as to what constitutes a case of mass influx warranting the activation of TPD, is inherently a political one (see Chapter 4). Hence, concerned with achieving political agreement, Member States may **prefer to invest time and effort in** setting up or securing concrete measures that provide **immediate responses rather than in negotiations** which may last long with uncertain results in the medium-term.
- The generous level of rights may have constituted an argument for Member States not to support the activation of the TPD. The implementation of these rights, considered more favourable vis-à-vis those incorporated in national temporary protection regimes, may be costly to the Member State.
- Another concern – and potential reluctance – to invoke the TPD relates to the duration for which temporary protection can be granted. With a maximum duration of three years, some stakeholders fear that Member States may use temporary protection to **sidestep** their **obligations under European and international law**. The TPD is built on the principle that temporary protection does not constitute a “third status”, but rather entitles beneficiaries to access to the procedure of international protection, with refugee status and subsidiary protection as a possible outcome. However, concerns were expressed that Member States would delay access to the procedure or first instance decision until the three-year period had elapsed. *De facto*, temporary protection would function as a (lower) parallel status.
- Some Member States expressed concern that activating the TPD would create another “**pull factor**”: A shift from individual-based determination to group-based protection is here perceived as potentially giving (extra) motivation to refugees in neighbouring countries to travel to the EU and “try their luck in accessing temporary protection”. This would in turn escalate the number of people seeking protection in the Union, exacerbating the pressure on its Member States.
- Activating the TPD has been perceived by some Member States as writing a “blank cheque” in the area of asylum. The combination of granting protection on a collective, (instead of an individual) basis to potentially all persons arriving from a particular country of origin or region and the mutual recognition of this status are seen as drastically reducing, or even **undermining**, the **national sovereignty** that Member States pursue in the decision on who can enter and state on its territory. However, such risk is, in fact, sensibly downsized by the fact that the Council Decision can set a time limit as to which persons the temporary protection mechanism would be applied to, while Member States would still be responsible for conducting the identification procedure for each person who may qualify for temporary protection, either on their territory or arriving there from another Member States (via the distribution scheme).
- Member States may have also decided not to invoke the TPD for reasons of “**national pride**” or reputation: regardless of the size or the severity of the pressure, requesting the activation of the TPD could have been interpreted as a failure of their national asylum system to effectively manage and cope with sudden increases in applications for international protection.
- In a similar vein, several actors consulted at the beginning of 2015 argued that the activation of the TPD may result in **rewarding “the bad pupils of the class”**, i.e. the Member States which have (systematically) ignored the need to develop a well-functioning asylum system that is able to cope with fluctuating inflows. Allegedly, the implementation of the TPD would allow “poor performing” Member States to benefit from temporary, EU-supported and financed measures and partly shift their burden to those complying more effectively with the CEAS

requirements (i.e. “well-performing” national systems). Consequently, preference was given by these actors to mechanisms which would secure that the concerned Member State sufficiently invests in its national asylum system and is able to effectively manage and cope with sudden increases in applications for international protection;

- According to some frontline Member States, TPD does not constitute a suitable tool or instrument to relieve pressure on Member States caused by “**mixed migration flows**”. Trying to activate a mechanism which can address only part of the problem (i.e. a clogging up of the *asylum* system due to a surge in applications for international protection by *certain* nationalities) would imply falling short of devising a comprehensive response and supporting the concerned Member States.
- Finally, in the light of the latest migratory developments and the alarming refugee crisis, the European Commission has put forward **new proposals** on provisional measures (emergency relocation mechanisms)<sup>75</sup> <sup>76</sup> and a permanent crisis relocation mechanisms<sup>77</sup>. These have so far received more political support than the triggering of the TPD and are increasingly considered as valid alternatives to the TPD. All three proposals are further discussed as part of Chapter 7.

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<sup>75</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/proposal\\_for\\_a\\_council\\_decision\\_on\\_provisional\\_relocation\\_measures\\_for\\_italy\\_and\\_greece\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/proposal_for_a_council_decision_on_provisional_relocation_measures_for_italy_and_greece_en.pdf)

<sup>76</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal\\_for\\_council\\_decision\\_establishing\\_provisional\\_measures\\_in\\_the\\_area\\_of\\_international\\_protection\\_for\\_it\\_gr\\_and\\_hu\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_council_decision_establishing_provisional_measures_in_the_area_of_international_protection_for_it_gr_and_hu_en.pdf)

<sup>77</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal\\_for\\_regulation\\_of\\_ep\\_and\\_council\\_establishing\\_a\\_crisis\\_relocation\\_mechanism\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_ep_and_council_establishing_a_crisis_relocation_mechanism_en.pdf)

## 6 Policy options and their assessment

This chapter identifies and assesses possible adaptations and alternatives to the Temporary Protection Directive. As such, it responds to the requirement as laid down in the Terms of Reference to: “describe and deliver an assessment of possible adaptations of, or alternatives to, the Temporary Protection Directive”.

The policy options were developed on the basis of the data gathered and analysed by the Study Team (see Chapter 2), in particular the analysis of the strengths and weaknesses of the TPD (Chapter 4) as well as the reasons for its non-implementation (Section 5.4). Moreover, the policy options were developed with a view to increasing the relevance of the TPD in the current asylum context. The selection and assessment of policy options were reviewed and validated during a workshop in which representatives of the following organisations participated: the European Commission, EASO, European Parliament/LIBE Committee, UNHCR and ECRE.

The identification and assessment of policy options is presented per thematic area, as follows:

- Criteria for the triggering the mechanism (Theme 1);
- Procedure to be followed for triggering the mechanism (Theme 2);
- Rights to be granted to persons being granted temporary protection and obligations of Member States (Theme 3); and
- The type of solidarity mechanism that would be used (Theme 4).

Each theme starts with an overview table, in which the policy options are i) listed and described; and ii) assessed. A narrative then follows, in which the assessment is explained in more detail.

The character of the policy options moves on a cumulative continuum (i.e. they build progressively on the previous one): the assessment can form the basis for a hybrid preferred policy option which combines elements of the different options listed (see Chapter 7). For the assessment of the policy options, the following criteria were used:

- Their effectiveness in achieving the policy objectives;
- Political feasibility;
- Legal feasibility, and;
- Operational considerations.

Policy options have been rated using two different criteria;

- Rating of the option: Assessing the technical quality of the policy option and the extent to which it would address key problems and meet EU objectives;
- Rating of the feasibility of the option: Assessing the legal and political feasibility of implementing the option.

Preferred policy options (see Chapter 7) were selected on the basis of *both* ratings, e.g. options with a high technical score but a low feasibility score have been discarded.

The main objectives of the TPD are two-fold:

- To establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who cannot return to their country of origin, and;
- To promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons

As they derive from the 1997 Amsterdam Treaty, the main general objectives can be replaced by the following in view of the adoption of the Lisbon Treaty (under which EU competence is no longer limited on minimum standards):

- Common system of temporary protection (art 78.2.c TFEU); and
- Solidarity and fair sharing of responsibilities (art. 80 TFEU).

## 6.1 Criteria for the triggering of the mechanism

Before listing and assessing the policy options (POs) concerning the criteria for triggering the TPD, Section 6.1.1 summarises the insights that the Study Team has gathered on *what to reflect upon when using the concept of 'mass influx' or related concepts in legislation and policies*. This thinking has not only informed the assessment in 6.1.2, but may also be considered of relevance in view of the recent proposals made by the Commission (see Chapter 7).

### 6.1.1 Reflection on concepts and indicators for measurement

This short reflection attempts to establish more objective criteria and indicators for measuring the key two concepts in the TPD that currently lack a clear definition.

'Mass influx', which is to trigger the TPD, is vaguely defined in the Directive (Art. 2d) The definition includes the following elements: 1) arrival in the community of a "large number" of people; 2) from a specific third country/region; 3) inability to return; 4) in particular when the arrival poses adverse effects on the asylum system.

Throughout this Study we have therefore studied two main concepts:

- **Mass influx**, as indicated and defined in the TPD;
- 'Adverse effects on the asylum system', which is only mentioned once in the Directive. In the Study, this phrase in the legislative instrument has been translated to '**pressure**' on the national asylum system, a more commonly used term.

Important considerations are indeed *what* is it that needs to be measured and *why* it is important to do so through a quantitative assessment, *how* concepts such as 'mass influx' and 'pressure' are best measured and *which* indicators are used to lay down the definitions. The *type* of measurement, such as whether to take into account absolute numbers or increases or rather considered relative increases over a certain time period. In the same vein, what minimum threshold is needed for it be potentially a case of 'mass influx' or 'pressure'? Given the fact that any mechanisms will need to take into account the peculiarities of a great variety of Member States, how can the concepts be weighted and nuanced so the 'burden' is fairly spread? The analysis shows that a plethora of issues need to be considered for achieving a fair and lasting definition, one that can count of broad support from the actors involved.

The main challenge relates to the conceptualisation, definition and measurement of these concepts via SMART indicators<sup>78</sup>. In this respect, a number of key issues need to be considered, as is shown in Table 3.

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<sup>78</sup> SMART indicators are S=Specific, M=Measurable, A=Achievable, R=Relevant, and T=Time-bound

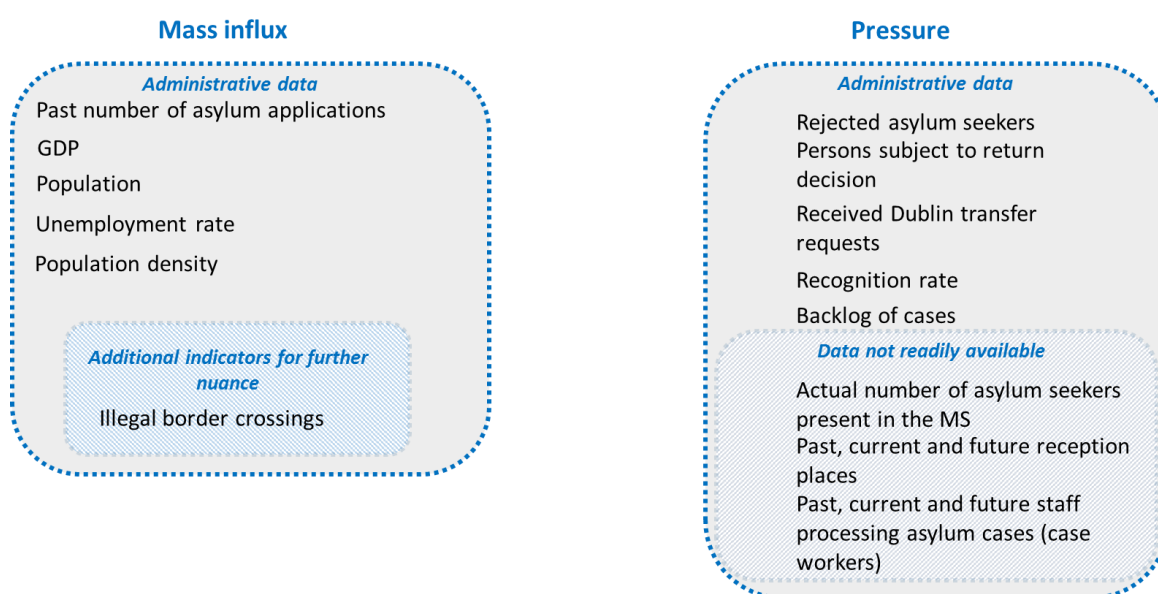
Table 3. Measuring mass influx and pressure

Issues consider	to Why is this important?	Concept 1: Mass influx	Concept 2: Pressure
Problem	Understand why it is important to attempt measurement	Lack of definition or indicators	Lack of definition or indicators
Identifying what measure	The only way to define a concept is by laying down the object for measurement	Measure the (absolute, and weighted) number of asylum seekers coming to the EU or Member State	Measure the persons who enter (and exit) the asylum and reception system
Key indicator(s)	The notions that define and make up the concept	Change in number of asylum applicants to the Member State	Change in stock of persons in the asylum and reception system Change in support services for asylum and reception system: Beds/reception places Case workers
Measurement considerations	Laying down the specific indicator to measure the concepts	Absolute numbers vs relative changes Need for minimum threshold	Absolute numbers vs relative changes Need for minimum threshold
Weighting	Achieve fairness in the measurement tool or mechanism	Nuance measurement of asylum applications by considering: Population Population density GDP Unemployment rate (a 'socio-economic' indicator for balancing GDP and population)	Nuance measurement of pressure by considering: Change in backlog of cases Rejected asylum applicants Persons subject to return decisions not yet returned Pending Dublin transfer requests not yet effectuated Recognition rate and resettlement efforts to date
Other indicators not strictly related to concept	Taking into account the overall burden on the MS	Illegal border crossings, to take into account the entry and presence of irregular migrants not applying for	NA

Issues to consider	Why is this important?	Concept 1: Mass influx	Concept 2: Pressure
		asylum and secondary movements	
Data availability	Where to get the data to measure the concept	Dependent on administrative data readily available at the national level (and Eurostat). An amendment to the Regulation (EC) No 862/2007 on Community statistics on migration and international protection could lead to future generation of this data	Only partially dependent on administrative data readily available at national level (and Eurostat). Some data (beds and case workers) not systematically collected and lacking a common definition.

It therefore follows that apart from a specific set of indicators, success also depends on the general availability of the data, as can be seen in Figure 4. This holds for both the TPD as well as for the more recent proposals made by the Commission in relation to the 2015 refugee/migration crisis (see details in Chapter 7).

Figure 4. Indicators to measure TPD's key two concepts



Several indicators for measuring 'mass influx' are part of the 'distribution key' for the relocation mechanism (see Chapter 7), though the aforementioned highlights the key issues that need to be considered in order to reach acceptable definitions of the main concepts and achieve indicators for objective measurement.

### 6.1.2 Criteria for the triggering of the mechanism

Table 4 below summarises, for thematic area 1 (criteria), the policy options and their assessment.

Table 4. Overview table for policy options on the concept of mass influx and pressure (thematic area 1)

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
<b>Status quo:</b> There are no definitions nor indicators of what constitutes 'mass influx' or 'pressure' on the asylum system	The current definition of 'mass influx' in the TPD (Art. 2) is 'arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme'.	<ul style="list-style-type: none"> <li>No clear definition of mass influx and lack of indicators to measure "pressure" and 'mass influx'. The disagreement on criteria to trigger TPD and how to fulfil these partially explains its non-activation;</li> <li>No balance of efforts between MS and immediate protection in the absence of TPD activation.</li> </ul>	1	Not applicable	Not applicable	None	-
<b>Option 1.a.1:</b> The TPD would include a non-exhaustive list (typology) of typologies of scenarios or cases that can be considered to be 'mass influx'. (in conjunction with 1.b.1)	The TPD would include a non-exhaustive list (typology) of typologies of scenarios or cases that can be considered to be 'mass influx'. E.g. in the preamble.	<ul style="list-style-type: none"> <li>Typology clarifies the criteria to activate the TPD, hereby facilitating the discussion regarding its activation among stakeholders;</li> </ul>	2 (standalone), 3 (with 1.a.2)	Medium: Least contentious option given non-exhaustiveness of list	<ul style="list-style-type: none"> <li>No problem of legal feasibility</li> </ul>	<ul style="list-style-type: none"> <li>Robust data collection and analysis underpin option.</li> </ul>	2 (standalone); 3 (with 1.a.2)



Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
		<ul style="list-style-type: none"> <li>It reduces scope for interpretation, and creates <u>shift from merely political to more technical discussions</u>;</li> <li><u>Higher probability</u> of actually activating TPD than under status quo.</li> </ul>		(mere indicative).			
<b>Option 1.a.2:</b>	<p>An Annex to the TPD would include further define and measure indicators for 'mass influx'. Indicators seek to measuring of establish a minimum threshold, defined by several indicators, such as:</p> <ul style="list-style-type: none"> <li>Absolute number of asylum applicants arriving per day/week/month;</li> <li>Above number as share of MS population, GDP, and unemployment rate (i.e. weighted indicators);</li> </ul> <p>(in conjunction with 1.b.2)</p>	<ul style="list-style-type: none"> <li>Combination of 3 typology and indicators facilitates discussing the possible activation of TPD among stakeholders, but to <u>a larger degree than PO 1.a.1</u>;</li> <li>It creates a <u>significant shift to technical discussions</u> regarding the</li> </ul>	3 (standalone); 4 (with 1.a.1)	<p>Medium: Indications would offer an orientation to COM on common indicators that are measurable and neutral;</p> <p>Difficulty of ensuring quality and availability of data</p>	<ul style="list-style-type: none"> <li>No problem of legal feasibility;</li> <li>Annex needed to Dir. on indicators;</li> <li>Need to foresee provisions to collect the necessary statistical data.<sup>79</sup></li> </ul>	As above	3 (standalone) 4 (with 1.a.1)

<sup>79</sup> Possibly a revised version of regulation 862/2007 on migration and asylum statistics.



Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
	<ul style="list-style-type: none"> <li>Increase in arrival as opposed to a previous period (per day/week/month) in the same year or the previous year (i.e. relative indicator).</li> </ul>	<ul style="list-style-type: none"> <li>possible activation of TPD, more than 1.a.1;</li> <li><u>Significantly higher</u> probability of actually achieving activating TPD than under status quo and higher than under PO 1.a.1 because criteria are laid down.</li> </ul>					
<b>Option 1.a.3:</b>	The number of MS to be affected for TPD activation are not specified. minimum number of MS which would need to be affected by the mass influx.	<ul style="list-style-type: none"> <li>Stipulating min. 1.5 number of MS <u>facilitates</u> the process of discussing the possible triggering of TPD among stakeholders;</li> <li>It <u>somewhat reduces</u> political and technical discussions and scope for interpretation;</li> </ul>	1.5	Low: likely controversial as 1 MS affected (lowest minimum) would have large impact on other MS.	<ul style="list-style-type: none"> <li>No problem, would need to be specified in preamble;</li> <li>Need to foresee provisions to collect the necessary statistical data.<sup>80</sup></li> </ul>	As above	2

<sup>80</sup> Possibly a revised version of regulation 862/2007 on migration and asylum statistics.

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
		<ul style="list-style-type: none"> <li>Slightly higher probability of actually achieving the activation TPD than for current TPD.</li> </ul>					
<b>Option 1.b.1:</b>	<p>The TPD would include a non-exhaustive list (typology) of situations that can be considered 'pressure' on the of the types of asylum system, including:</p> <ul style="list-style-type: none"> <li>Insufficient staff/capacity to process applications for international protection;</li> <li>Backlog of pending cases;</li> <li>Occupancy rate of reception facilities approximating 100%;</li> <li>Insufficient beds or reception places to accommodate all applicants registered;</li> <li>Substandard reception in emergency accommodation.</li> </ul> <p>(in conjunction with 1.a.1)</p>	<ul style="list-style-type: none"> <li>Typology clarifies the criteria to activate the TPD, hereby facilitating the discussion regarding its activation among stakeholders;</li> <li>It reduces scope for interpretation, and creates <u>shift from merely political to more technical discussions</u>;</li> <li>Higher probability of actually achieving activating TPD than under status quo.</li> </ul>	2 (standalone), 3 (with 1.b.2)	Medium: Least contentious option given non-exhaustiveness of list (mere indicative).	<ul style="list-style-type: none"> <li>No problem but need to define 'reception capacity' and 'processing' (through a "comitology" procedure?);</li> </ul>	As above	2 (standalone); 3 (with 1.b.2)

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
<b>Option 1.b.2:</b> The TPD would include a range of indicators to include further define and measure quantitative 'pressure' on the asylum indicators for system. For each type of measuring the pressure listed under 1.b.1, a different types (combination of) indicators of pressure on would be developed. Indicators national systems (in conjunction with 1.a.2)	<ul style="list-style-type: none"> <li>• An Annex to the TPD would include a range of indicators to include further define and measure quantitative 'pressure' on the asylum indicators for system. For each type of measuring the pressure listed under 1.b.1, a different types (combination of) indicators of pressure on would be developed. Indicators national systems (in conjunction with 1.a.2)</li> <li>• Ratio of the number of applications <i>to be processed</i> vs the number of cases workers in function ("Indicator a");</li> <li>• The relative in/decrease in "indicator a", compared to a previous period;</li> <li>• "Indicator a" weighted as a share of GDP, population size and unemployment rate;</li> <li>• Ratio of the number of applications <i>processed</i> vs the number of cases workers in function;</li> </ul>	<ul style="list-style-type: none"> <li>• Combination of typology and indicators facilitates discussing the possible activation of TPD among stakeholders, but to a larger degree than PO 1.b.1;</li> <li>• It creates a significant shift to technical discussions regarding the possible activation of TPD, more than 1.b.1;</li> <li>• Significantly higher probability of actually achieving activating TPD than under status quo and higher than under PO 1.b.1 because criteria are laid down.</li> </ul>	3 (standalone); 4 (with 1.b.1)	Medium: Indications would offer an orientation to COM on common indicators that are measurable and neutral; Difficulty of ensuring quality and availability of data; Could be perceived as undermining the objective of equal standards of reception and processing within the CEAS (hence in all MS).	Need provisions collect necessary statistical data <sup>81</sup>	for Regular and 3 to robust data (standalone); the collection and 4 analysis underpins option; The validity and reliability of the data used for calculating indicator scores would need to be independently verified.	3 (standalone); 4 (with 1.b.1)

<sup>81</sup> possibly a revised version of regulation 862/2007 on migration and asylum statistics.

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
	<ul style="list-style-type: none"> <li>The % variation in the average processing time for a certain time period;</li> <li>The % variation in the number of pending cases (backlog) for a certain time period;</li> <li>The % variation in the occupancy rate of reception facilities for a certain time period;</li> <li>Etc.</li> </ul>						
<b>Option 1.b.3:</b>	MS required to indicate whether they are experiencing particular pressures. This could be done via a standard form, in which MS would specify and evidence the pressure(s) they are facing. Such assessment could be based on both quantitative and qualitative criteria (see examples under option 1.b.2 and 1.a.3). (linked to 1.b.1/1.a.1 and 1.b.2/1.a.2)	<ul style="list-style-type: none"> <li>It <u>does not lead to a reduction</u> in political and technical discussions and leaves significant scope for interpretation;</li> <li><u>Limited</u> probability of actually activating TPD,</li> </ul>	2	Low: Self-assessment by MS might be considered too partial and as reinforcing (or at least consolidating) different standards and imbalance of	Not in line with article 78, §2, point c) TFEU <sup>82</sup>	<ul style="list-style-type: none"> <li>Data would need to be independently verified by COM or other actor;</li> </ul>	2

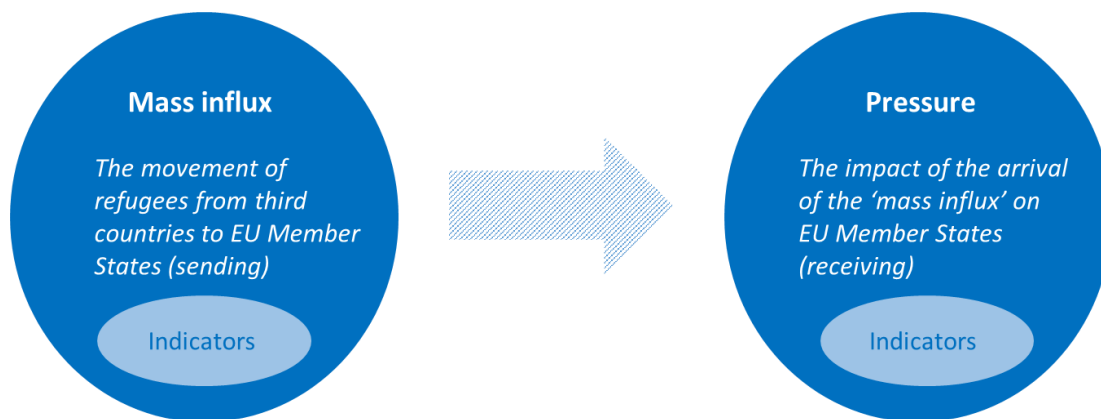
<sup>82</sup> following which the EU shall adopt measures for "a common system of temporary protection for displaced persons in the event of a massive inflow" (discretion left to Member States does not put in place a system that can be considered as common).

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
		similar to status quo.		efforts among MS;  If MS responsible for first line assessment, puts less pressure on COM as gatekeeper.			

The TPD does not provide a clear definition of the concepts of 'mass influx' or 'pressure', which leaves the concept of 'mass influx' undefined, intangible and unmeasurable in its present circumstances. The current definition of "mass influx" refers to: 1) arrival in the community of a "large number" of people; 2) from a specific third country/region; 3) inability to return; 4) in particular when the arrival poses adverse effects on the asylum system, further defined as 'pressure'<sup>83</sup>.

The concepts of 'mass influx' and 'pressure' on the asylum system are closely related but nevertheless distinct. This is shown in Figure 5. A case of 'mass influx' *may* lead to 'pressure', but this is not necessarily the case. This conceptual distinction is important for defining the criteria and indicators for measurement.

Figure 5. Concepts of 'mass influx' and 'pressure' according to the TPD



On the question of how to conceptualise, define and measure 'mass influx' or 'pressure' on the asylum system, there is widespread disagreement among Member States, among EU actors (e.g. European Commission and European Parliament) and within academic circles. Amidst these ensuing debates, inductive reasoning may further the conceptualisation of these key terms and criteria for triggering the TPD, i.e. what does the data on inflows into the EU and, if applicable, related pressures on national asylum systems tell us.

In this respect, the only potential benchmark at the TPD's onset in 1999-2001 was the 'Kosovo benchmark'. Box 1 provides an overview of the concept of the 'Kosovo Benchmark', which was introduced in the Proposal and ultimately applied for measurement in the Interim Report and specifically for the 11 case studies. The establishment of the Benchmark helped to show that in the period 2001 to 2014 there were several cases that were cases of especially 'mass influx' and possibly 'pressure' if the 1999-2000 crisis is used as a starting point. Compared to previous waves of refugees, such as around the Yugoslav wars between 1990 and 1995, several of the 2001-2014 crises might not be seen in the same light.

#### Box 1 Kosovo benchmark

- The Study established the Kosovo benchmark as a conceptual term for attempting to comparing asylum figures from 1999-2000 to the period thereafter.
- It concerns a number of indicators that have been explored for analysis:

Absolute numbers of asylum applications;

Relative month-on-month increases of asylum applications;

<sup>83</sup> Only mentioned once in the Directive, the concept has been translated to 'pressure' even though the latter term does not appear in the Directive. However, given the increasing reference to 'pressure' as the other side of the coin it was opted to use this term.

The ratio of total asylum applications to Member State population size;

The ratio of total asylum applications to Member State unemployment rate;

The ratio of total asylum applications to Member State GDP.

- The analysis was divided in two main time periods: 2001 to 2011 and 2011 to 2015. (The latter the period after the Arab Spring).
- The analysis concluded that there were some possible but unlikely cases of 'mass influx' for the period 2001 to 2011. However, for the period 2011-2014 there were several strong cases of 'mass influx'. For 2015 there are several definite cases of 'mass influx', as explained above this Box.
- What this evidence shows is that the Kosovo Benchmark cannot directly be applied to later years because of enlargement of the EU from 15 via 25 and 27 to 28, the development of CEAS and CEAS II, Regulation 862/2007 and geopolitical developments, especially after the start of the Arab Spring in 2011 and the 2015 Syrian crisis.
- What it does make clear, however, is the need for defining criteria and indicators for measuring the concepts of the Directive. In that sense the Kosovo benchmark is relevant in the discussion on the distribution key of the relocation scheme.

However, this reference point is without immediate relevance in the 2015 asylum landscape due to the enlargement of the EU from 15 via 25 and 27 to 28 Member States, the development of first and second generation legislative instruments of the CEAS, Regulation 862/2007 and geopolitical developments, especially in view of the influx following the Arab Spring in 2011 and the Syrian crisis in 2015.

In the absence of an EU-wide definition and workable tool, a number of Member States have laid down national definitions of 'mass influx'. This, however, reveals a scattered and inconsistent picture. Rendering these concepts clear, specific, measurable and relevant (i.e. via the use of SMART indicators) is a *sine qua non* to allow for (more) focused, evidence-based and technical discussions on whether or not a potential case of mass influx or pressure may be observed within the CEAS and whether the TPD would be the most appropriate instrument to respond to it. Hence, it should curtail purely political debates, which have surrounded the TPD with a sphere of inertia.

All proposed policy options (PO) considered in Table 6.2 aim to progress towards a better definition of the concept of 'mass influx' and 'pressure'. The typology or bullet-point list under POs 1.a.1 and 1.b.1 includes a non-exhaustive list of various scenarios that would define different types of 'mass influx' or 'pressure on the asylum system'.

PO 1.a.3 would further specify the concept of 'mass influx' by laying down the minimum number of Member States that would need to be affected for triggering the TPD. The rationale for stipulating that one Member State may be sufficient (PO 1.a.3) is that a Member State, especially if located at the external borders of the EU, could be adjacent to the conflict zone and, as such, become the gateway or main entry point to the EU for refugee movements. These movements may subsequently spread to other EU Member States, resulting in a more EU-wide 'mass influx' and challenge to the CEAS. Furthermore, it ensures solidarity and burden-sharing (whether financial or physical) with this State. On the one hand, this option lowers the threshold and increases the scope for action of the TPD in exceptional circumstances. On the other, it may be deemed controversial measure, i.e. having major repercussions for other Member States in terms of decision-making on applications for international protection, obligation to relocate, and so forth; setting a precedent for other (frontline) Member States to ignore or deprioritise the setup of a well-functioning and robust asylum system that can cope with fluctuations in inflow; etc. (see Section 5.2).

POs 1.a.2 and 1.b.2 on identifying specific indicators for measuring 'mass influx' and 'pressure' build on POs 1.a.1 and 1.b.1 (a non-exhaustive list of situations or scenarios that describe these concepts). Combining the typology with the drafting of indicators (i.e. policy options 1.a.1, 1.a.2 and 1.b.1 and 1.b.2) would significantly enhance the clarity and function of the Directive, limit discussions among stakeholders as to whether criteria are/are not fulfilled and thus increase the TPD's scope for action vis-à-vis situations of 'mass influx' (and 'pressure'). However, political agreement on common indicators that are SMART and neutral would be hard to reach, plus proper measurement would require regular collection of accurate, valid and reliable data. This reservation is particularly relevant in relation to the concept of 'pressure' on the national asylum system.

Finally, PO 1.b.3 would leave the initial assessment of 'pressure' in the hands of Member States. It is linked to options 1.b.1 or 1.b.2 because such a self-assessment would only have real value if the concepts of 'mass influx' and 'pressure' are clarified. As a standalone option it has limited impact. It does not alter the procedure for activating the TPD and places the responsibility for presenting a carefully elaborated case of 'pressure on the asylum system' with the Member State(s) affected. Next to questions regarding the validity of this self-assessment, this PO is Not in line with article 78, §2, point c) of the TFEU.

It follows that the combined POs "1.a.1-1.a.2" and "1.b.1-1.b.2" are the preferred policy options.

## **6.2 Procedure to be followed for triggering the mechanism and its duration**

Table 5 below summarises, for thematic area 2 (procedure), the policy options and their assessment.



Table 5. Overview table assessment of policy options on the procedure (thematic area 2)

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
<b>Status quo</b>	The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council (Art.5).	Lengthy and cumbersome procedure undermine the key objectives of the TPD: provision of immediate protection and relieve pressure on national asylum system(s)	1	Not applicable	Not applicable	None.	-
<b>Option 2.1.a</b> Regular factual check by the Commission of the criteria for mass influx and/or national pressure, COM puts forward a proposal and Council/EP decide	If quantitative criteria are used (see Theme 1 above), COM would be obliged to conduct a regular factual check of the criteria and decide whether or not to submit a proposal for activation to the Council. The option would thus introduce a regular factual check at COM level, based on objective (non-biased) criteria. This may also include stricter rules and time limits as to the factual check (e.g. COM would need to produce a report, according to a standard form and needs to decide within x days/weeks to put forward a proposal) in order to favour the "immediateness" of the intervention. A	Clearer and shorter activation process enhances effectiveness in preventing or responding to a blockage in national asylum systems and in providing immediate access to protection	3	Medium High: Increasing the TPD's effectiveness is an EU and national priority.  Political will to establish objective criteria may be limited (see Theme 1).	- No problem of legal feasibility,	The development of a standard assessment form (in Annex to the Directive) may be useful.	3

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
	similar time limit could be introduced for the Council.						
<b>Option 2.1.b</b> <u>Regular factual check</u> by EASO of the criteria for mass influx and/or national pressure, COM to verify the factual check and, based on its own assessment, put forward a proposal. Council/EP decide	Identical to option 2.1.a, except for the fact that it would introduce a regular factual check of the criteria at Agency level (i.e. EASO). This may include a link with the Early Warning Mechanism.. Following EASO's factual check, the COM, based on its own assessment, decides whether or not to put forward a proposal.	Similar to 4 above. In comparison to option 2.1.a, the above impact could be greater given EASO's role in the EPS (i.e. more efficient assessment)		Similar to above	No problem of legal feasibility, potentially amendment to EASO Regulation required.	The development of a standard assessment form (in Annex) may be useful. Sufficient human resources and costs should be earmarked for EASO role.	4
<b>Option 2.2</b> <u>Obligatory proposal</u> for activation by COM requiring the Council/EP to review and decide <u>each time the criteria for mass influx and/or national pressure are met.</u>	If quantitative criteria are used (see Theme 1), and these are found to be met based on the factual check, COM would be obliged to automatically submit a proposal accompanied with a 'situational report' (with recommendations on activation or not) to the Council/EP. The Council/EP would then decide whether to activate the mechanism or not. This would imply an 'automatic' review process at legislator level. This option could also introduce some stricter rules and time limits as to the assessment process and the decision-making process (see Option 2.1.a).	Similar to 4 above. In comparison to option 2.1.a and b, the procedure would be faster (no assessment by COM, but automatic proposal) and the impact thus greater.		Low: COM not "gatekeeper" and resource-intensive approach	No problem of legal feasibility.	Sufficient human resources and costs should be earmarked for the implementation of such proposal.	1

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
<b>Option 2.3</b> <u>Assessment and activation by EASO</u>	EASO would be fully responsible for the entire procedure, from identification of the mass influx / pressure on the asylum system, to assessment and activation decision. This option could also introduce some stricter rules and time limits as to the assessment process and the decision-making process (similar to Option 2.1.a).	Similar to above. In comparison to option 2.1a, 2.1b and 2.2, the potential impact is the highest as the procedure is shortened and more flexible.	4	Low: Reluctance in view of non-involvement of COM and MS	TFEU does not allow for change of Regulation 439/2010; Problem with Meroni Doctrine (risk of delegating powers involving some discretion to an agency that is not foreseen by the treaties).	Sufficient human resources and costs should be earmarked for the implementation of such proposal.	0

One of the key objectives of the TPD is to provide *immediate* access to protection and *prevent* the blockage of national asylum systems. However, the procedure to activate and implement the TPD is in its **status quo** lengthy, unclear and cumbersome, potentially undermining the very objective of the TPD.

The European Commission (COM) is the gatekeeper and can put forward a proposal to activate the TPD, either out of its own initiative or after examining a request of a MS. Subsequently, the Council decides on the activation. The number of steps (see Chapter 4) to be taken between the occurrence of a mass influx and the implementation of the TPD is high resulting in a lengthy procedure. Moreover, the content of the steps are unclear. For example, it is not clear if/when and how the COM is obliged to assess a request made by a MS for activation (see response to IT and MT requests in Chapter 4). Finally, as there are no clear criteria and related indicators for activating the mechanism, the political discretion for both the assessment as well as the decision-making on the activation is too high. The procedure may be seriously hampered by political debates at each stage of the procedure (i.e. the decision to request (MS), to propose (COM) and to activate (Council) the TPD) in absence of a common concern shared among Member States. This results in the activation procedure primarily being a political exercise, which is not sufficiently based and informed by a technical analysis of whether the conditions have been fulfilled and whether the activation of the TPD would bring an appropriate solution. In fact, stakeholders confirmed that the tortuous procedure underpins one of the reasons for which the TPD was never applied. The current procedure therefore undermines the TPD's very existence and, should it be activated in its current form (and within a fractured political environment), the TPD would not be effective in reaching its key objectives (providing immediate protection and preventing a blockage of national asylum systems).

All proposed policy options, as can be seen in Table 6.3, to different degrees, aim to provide for a shorter and clearer activation process which would overcome the shortcomings as described in the status quo above and enhance the TPD's effectiveness in providing immediate protection and preventing a blockage of national asylum systems. Under policy options 2.1a and 2.1b the COM (option 2.1a) or EASO (option 2.1b) are required to perform regular factual checks on the criteria for mass influx/national pressure (see thematic area 1). The requirement that the COM should carry out regular factual checks of the criteria reduces the discretion the Commission currently has as to whether an assessment is required and what the assessment should consist of. Furthermore, the number of steps is reduced and the content of steps clarified, making the procedure faster and more transparent. As such, the performance of a regular check on the criteria enhances the consideration and potential of the TPD as an effective tool to respond to cases of mass influx/pressure. EASO (Option 2.1b) may arguably be more efficient and effective in performing such regular factual checks as it already systematically collects data to detect (imminent) situations of pressure and particularly those where Member States may not be able to cope while respecting EU asylum acquis. Subsequently, EASO has a toolbox at its disposal with which it can strengthen the capacity of the national asylum system to deal with the pressure (e.g. training, COI, quality tools, during the preparedness phase and/or if so required "operational support" during the crisis management phase). EASO is hence equipped to perform regular factual checks of the criteria and notify the COM of a potential situation for the TPD to be activated. The Commission would still perform its own assessment, whilst taking into account EASO's factual check, and will remain responsible to put forward a proposal (or not). As such, it will remain the "gatekeeper", ultimately carrying responsibility for assessing the most appropriate response to the situation (e.g. TPD or other forms of support such as activation Early Warning Mechanism, temporary relocation etc.). Policy option 2.1b could potentially require an amendment to the EASO Regulation and an increase in the Agency's resources. An amendment to the EASO

Regulation is however considered likely in view of the evaluation that is currently being carried out.

Options 2.2 and 2.3 go further than options 2.1a and 2.1b insofar as these reduce the number of steps to be taken and hence shorten the procedure to activate the TPD. The activation procedure under option 2.3 (assessment and activation by EASO) is even faster and more flexible than the one foreseen under option 2.2 (automatic proposal by COM). However, both options are legally and politically unfeasible, presenting also operational obstacles. Under option 2.2, the obligatory drafting of proposals by the COM and automatic gatherings of the Council/EP are resource-intensive and undesired by stakeholders. Finally, under option 2.3, the assessment and activation by EASO is not only politically unfeasible but also from a legal point of view not possible. It would require amendments to EASO's mandate (for which political agreement must be reached) to include prerogatives that may be considered contrary to the spirit of the current Regulation 439/2010 and also raise questions on EASO's independency vis-à-vis Member States. Empowering EASO to activate the TPD would contradict the TFEU under which the COM has the right of initiative and contravenes the "Meroni doctrine" prohibiting the delegation of discretionary power to agencies in derogation to the checks and balances of the institutional framework of the EU established by the Treaties.

It follows that option 2.1b is the "preferred" option, whereby EASO would assess (influx and possible pressure resulting from this), the Council and European Parliament would decide and the Commission would play an intermediary role, identifying the most appropriate response to the situation depicted by EASO.

### **6.3 Rights to be granted to persons being granted temporary protection and obligations of Member States**

Table 6 below summarises, for thematic area 3 (rights), the policy options and their assessment.

Table 6. Overview table assessment of policy options on duration and rights (thematic area 3)

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
<b>3.a Duration</b>							
<b>Status Quo</b> The TPD (Art.4a) foresees an initial duration of 1 year, with a maximum duration of 3 years.	Minimum duration is similar to that granted through national protection regimes (i.e. 1 year, extendable).	<ul style="list-style-type: none"> <li>• <u>Relieves pressure</u> on 2 national asylum system due to granting group-based protection; individual asylum procedure can be postponed.</li> <li>• Provides <u>immediate protection</u></li> <li>• <u>Risk</u> of extending duration beyond organisational need, plus <u>using it as a 3rd status</u></li> </ul>		<i>Not applicable</i>	<i>Not applicable</i>	None	-
<b>Option 3.a.1</b> Duration of 1 year, with a maximum duration of 2 years	The duration of temporary protection would be one year. It may be extended automatically by six monthly periods for a maximum of one year.	<ul style="list-style-type: none"> <li>• <u>Relieves pressure</u> on 3 national asylum system due to granting group-based protection; individual asylum procedure can be postponed.</li> <li>• Provides <u>immediate protection</u></li> </ul>		Medium to high at both EU and national level	Legally feasible	Swift administrative procedures to extend permit, if needed	3

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
		<ul style="list-style-type: none"> <li>• <u>Lowers risk</u> of extending duration beyond organisational need, or using it as a 3<sup>rd</sup> status</li> </ul>					
<b>Option 3.a.2</b> Duration of 6 months, with a maximum duration of 9 months.	<p>The duration of temporary protection would be 6 months. It may be extended by another 3 months, hence would last maximum 9 months.</p> <p>This would mirror the Asylum Procedures Directive, where Art. 31 (3) foresees a period of 6 months for examining an application, which can be extended by 3 months in case of a large number of third-country nationals or stateless persons applying simultaneously for international protection.</p>	<ul style="list-style-type: none"> <li>• <u>Relieves pressure</u> on 4 national asylum system due to granting group-based protection; individual asylum procedure can be postponed.</li> <li>• Provides <u>immediate protection</u></li> <li>• Minimises risk of extending duration beyond organisational need; <u>not possible</u> to use TP as a 3<sup>rd</sup> status</li> </ul>		Medium to high at both EU and national level	Legally feasible	Swift administrative procedure to extend permit, if needed	4
<b>3.b Rights of persons being granted temporary protection</b>							
Status Quo The TPD (Chapter III) includes obligations and rights which relate to the duration of the permits	Rights include the take up of employment or self-employed activities; their access to education and training; accommodation standards; social benefits; medical	The common system for 3 temporary protection is successful <u>on paper, but not in practice</u> due to the non-activation of the TPD. MS consider or continue to		<i>Not applicable</i>	<i>Not applicable</i>	None.	-

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
	granted to persons enjoying temporary protection.	care; family unity; unaccompanied minors.  It is important to bear in mind that the TPD was adopted before any of the other CEAS instruments were adopted and that the latter in the meantime have also been the subject of recasts.					
<b>Option 3.b.1</b> <i>Full alignment with the recast Reception Conditions Directive related to applicants for international protection</i>	Where relevant provisions differ, the TPD would be aligned with those granted to applicants for international protection. This may, in a few cases, actually imply a lowering of rights, for example in relation to those which set out access to employment.	<ul style="list-style-type: none"> <li>Contributes to the 1 provision of <u>harmonised temporary protection</u>;</li> <li>May <u>undermine</u> the objective of providing an <u>adequate and fair level</u> of rights (especially lack of employment), especially if TP lasts up to 3 years</li> </ul>		The legal congruence of the CEAS instruments is an EU and national political priority.	Provision of asylum seekers' rights to those who are considered in need of protection would contradict with the Geneva Convention and thus with article 78, §1 TFEU	Provision 1 of practical cooperation to ensure harmonised implementation	
<b>Option 3.b.2</b>	Rather than aligning all rights foreseen in the TPD with the recast RCD, this would be done for a	<ul style="list-style-type: none"> <li>Contributes to the 3 provision of</li> </ul>		As above	Legal feasibility depends on	Similar to 3 the above	



Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
<i>Selective</i> alignment with the recast Reception Conditions Directive related to applicants for international protection, <u>where deemed relevant</u>	selection of rights. The primary aim would be to provide for a set of rights for beneficiaries of temporary protection, which would be coherent and adapted to their situation.	<ul style="list-style-type: none"> <li><u>harmonised temporary protection</u>;</li> <li><u>Coherent</u> package of rights.</li> <li>May <u>still undermine</u> the provision of an adequate and fair level of rights (see above), especially if TP lasts 3 years</li> </ul>			the package of rights selected.		
<b>Option 3.b.3</b> <i>Full</i> alignment with the recast Qualification Directive related to beneficiaries of subsidiary protection	Where relevant provisions differ, the TPD would be aligned with those granted to beneficiaries of subsidiary protection as laid down in the recast QD.	<ul style="list-style-type: none"> <li>Contributes to the 2 provision of <u>harmonised</u> temporary protection;</li> <li>Provides for an <u>adequate</u> and fair level of rights, especially if TP lasts 3 years, but lower than Geneva Convention.</li> </ul>	2	As above	Legally feasible	Similar to 2 the above	
<b>Option 3.b.4</b> <i>Selective</i> alignment with the recast Qualification Directive related to	Rather than aligning all rights foreseen in the TPD with the recast QD (subsidiary protection), this would be done for a selection of rights. The primary aim would be to	<ul style="list-style-type: none"> <li>Contributes to the 2.5 provision of <u>harmonised</u> temporary protection;</li> </ul>	2.5	As above. Plus: MS possibly reluctant to adopt this in	Legally feasible	Similar to 2.5 the above	

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
beneficiaries of subsidiary protection, where deemed relevant	provide for a set of rights for beneficiaries of temporary protection, which would be coherent and adapted to their situation.	<ul style="list-style-type: none"> <li>• <u>Coherent</u> package of rights;</li> <li>• Provides for an <u>adequate</u> and fair level of rights, especially if TP lasts 3 years, <u>but lower</u> than what is foreseen in Geneva Convention.</li> </ul>		view of <u>higher costs</u> for implementation.			
<b>Option 3.b.5</b> <i>Full</i> alignment with the recast Qualification Directive related to Geneva Convention refugees	Where relevant provisions differ, the TPD would be aligned with the rights as laid down in the recast QD for Geneva Convention refugees.	<ul style="list-style-type: none"> <li>• Contributes to the 2 provision of <u>harmonised temporary protection</u>;</li> <li>• Provides for an <u>adequate</u> and fair level of rights, <u>in line with the Geneva Convention</u>, especially if TP lasts 3 years.</li> </ul>		Similar to above	Legally feasible	Similar to 1 the above	
<b>Option 3.b.6</b> <i>Selective</i> alignment with the recast Qualification Directive related to Geneva Convention refugees,	As for Option 3.a.4 but then related to Geneva Convention refugee rights.	<ul style="list-style-type: none"> <li>• Contributes to the 2.5 provision of <u>harmonised temporary protection</u>;;</li> <li>• Provides for an <u>adequate</u> and fair level of rights, <u>in line with</u></li> </ul>		Similar to above	Legally feasible	Similar to 1.5 the above	

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
	where deemed applicable	<p>the Geneva Convention, especially if TP lasts 3 years,;</p> <ul style="list-style-type: none"> <li>• Coherent package of rights.</li> </ul>					
<b>Option 3.b.7</b>	<p>This would represent a <u>sliding scale of rights</u> granted to beneficiaries of temporary protection <u>tailored to the duration of TP</u>: rights in line with asylum seekers during the first 6 months and then rising to rights foreseen for beneficiaries of international protection if for a extended duration of 9 months.</p> <p><i>First 6 months</i>, rights on the basis of selective alignment with recast Reception Conditions Directive</p> <p><i>If extended to 9 months</i>, rights represent selective alignment with recast Qualification Directive for beneficiaries of subsidiary protection</p>	<ul style="list-style-type: none"> <li>• Contributes to the 4 provision of <u>harmonised temporary protection</u>;;</li> <li>• Provides for an <u>adequate</u> and fair level of rights, <u>dependent on the duration of TP</u></li> <li>•</li> </ul>		<p>The legal congruence of the CEAS instruments is an EU and national political priority.</p> <p>Sliding scale to prevent</p>	Legally feasible	Similar to 4 the above	4
<b>3.c Return of persons being granted temporary protection</b>							
<b>Option 3.c.1</b>	<p>The TPD would refer to the Return Directive to regulate the full return procedure when temporary protection ends (and beneficiaries have not applied for / are not eligible for another status).</p> <p>Full alignment with the Return Directive</p>	<ul style="list-style-type: none"> <li>• Contributes to harmonising temporary protection.</li> </ul>		<p>The legal congruence of the CEAS instruments is an EU and national</p>	Legal obligation	NA	5

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
				political priority.			

The TPD establishes minimum standards for giving temporary protection, with a view of: harmonising the granting of temporary protection; providing an adequate and fair level of protection to those concerned; and averting the risk of secondary movements.

Upon the activation of the TPD, beneficiaries of temporary protection are entitled to a set of rights, which can be considered fair and offering an adequate level of protection to those concerned (see Chapter 4). Each Member State is obliged to grant the rights laid down in Art. 8 to 16, hereby creating a level playing field across the EU. However, despite the stipulation of minimum standards, it is likely that the degree to which beneficiaries would be able to access and claim these rights in practice would continue to differ due to (1) the state of transposition of the TPD (see Chapter 3) and (2) differences in the human and financial resources (made) available in Member States for the implementation of the TPD (similar problems as implementation recast Qualification Directive). Consequently, it may be doubted whether the risk of secondary movements could be averted.

Under the status quo, the TPD has, however, not been activated. Hence, instead of applying the EU-harmonised form of temporary protection, Member States have continued to grant forms of national temporary protection and/or consider to do so in the present asylum crisis. Indeed, while the first and second generation legislative instruments harmonised the Geneva Convention and subsidiary protection statuses, a wide range of non-EU harmonised protection statuses continue to exist and are applied in Member States, among which forms of temporary protection (see Chapter 3). These significantly differ in terms of the standards of protection among Member States, with in some cases standards not attaining those laid down in the TPD. As a result, the TPD did not succeed in harmonising part of this landscape, due to its non-activation.

Furthermore, the duration presently foreseen by the Directive (1-3 years) cannot be deemed short or “temporary”. *Provided* that the TPD activation results in an effective and *timely* distribution of beneficiaries across the Member States (see Theme 4 below), the problem of backlog on the processing of applications for international protection may be relatively quickly resolved. Hence, the duration of temporary protection could be significantly reduced, as explored in the policy options under Theme 3.a. In view of the recast Asylum Procedures Directive (APD) adding to the basic 6 months period foreseen for the examination of an asylum claim an extension of 3 months in case “a large number of third-country nationals simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit” (article 31, 3, 3<sup>rd</sup> indent, b), it could be argued that a period of maximum 9 (6+3) months should suffice. Such solution (see option 3.a.2) would ensure coherence between the TPD and the recast APD.

Given the political commitment to fostering coherency among CEAS instruments, the question also arises whether the rights laid down in the TPD should be aligned with the current asylum acquis in case of amendments. The policy options under Theme 3.b therefore explore the *alignment* with the recast Receptions Directive (RCD) or with the recast Qualification Directive (QD) (subsidiary protection or Geneva Convention status). In terms of the *degree* of alignment, the options comprise the possibility of full or selective alignment. The reasoning underpinning the *selective* alignment is twofold. Firstly, from a purely legal perspective, there is discretion to determine which rights are granted, as long as these do not contradict the Geneva Convention and are in line with the objectives of offering “fair” and “an adequate level of protection”. Secondly, ideally, legislative instruments should lay down a coherent set of rights, which are adapted to the situation faced by those entitled to these rights – here: beneficiaries of temporary protection. For example, it is key that beneficiaries have access to work and can ensure their own means of subsistence, especially in light of an extended duration of temporary protection. Therefore, the selective alignment scores higher.

When assessing options 3.b.1 and 3.b.2, which would limit the rights of persons under temporary protection to those given to asylum seekers under the recast RCD, this could be considered appropriate for persons granted temporary protection for a short time. However, these rights would represent a disproportional derogation to the Geneva Convention *should* the temporary protection last three years. The option of aligning the TPD with the provisions foreseen for those granted refugee status in the recast QD (i.e. options 3.b.5 or 3.b.6) may be favoured to secure a high level of protection, especially if the present duration for TP (i.e. up to three years) is maintained. Furthermore, stakeholders, such as ECRE and UNHCR, consider this as reinforcing the trend set during the negotiations regarding the recast QD, i.e. to erase the differences in rights between those granted refugee status and subsidiary protection. However, Member States consulted in the course of this Study expressed concerns in raising the level of rights, arguing this would imply higher costs for the Member States receiving beneficiaries of temporary protection and may ultimately undermine the political will to activate the TPD.

In sum, if the duration of the temporary protection could be reduced to a – truly – temporary period of time (see option 3.a.2), the option of selectively aligning the rights of beneficiaries of temporary protection with those foreseen for asylum seekers under the recast RCD for the first six months and, if extended to nine month, to beneficiaries of subsidiary protection in the recast QD may represent the best compromise. This sliding scale of rights, where rights gradually increase with the duration of temporary protection, is reflected in Option 3.b.7 and would be the preferred option.

#### **6.4 The type of solidarity mechanism**

Table 77 below summarises, for thematic area 4 (solidarity), the policy options and their assessment.

Table 7. Overview table assessment of policy options on distribution mechanisms and cost-sharing (thematic area 4)

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
<b>4.a Distribution of people seeking protection</b>							
<b>Status Quo:</b> Voluntary distribution mechanism among MS, based on "double volunteerism"	Upon the activation of TPD, MS are to indicate their capacity to receive eligible persons on a voluntary basis. If the number of eligible persons exceeds the reception capacity expressed by the MS, the Council shall take "appropriate action, including recommending additional support for Member States affected". Beneficiaries are to consent to relocation to other MS.	The text of the TPD remains ambiguous and Member States are not <i>obliged</i> to take on eligible persons for temporary protection. Beneficiaries may object to relocation to some MS. Ultimately, the principle of "double volunteerism" may undermine the TPD's objective of promoting solidarity and a balance of efforts among MS.	1.5	Not applicable	Not applicable	Not applicable	-
<b>Option 4.a.1</b> Facultative distribution of persons eligible for temporary protection (via quantitative criteria)	MS are entitled to confirm, reject or propose revisions to the share of persons as calculated by the competent body on the basis of a distribution key (facultative distribution).  Distribution key: Quantitative criteria such as asylum figures relative to population or population density; recognition rate; reception capacity; GDP; unemployment rate; etc. could be used to define the exact share of persons to be relocated to each MS willing to take part to the scheme.	<ul style="list-style-type: none"> <li>Common (quantitative) indicators help to establish a <u>transparent</u> system;</li> <li>Transparent and facultative nature of the system <u>may increase</u> support for <u>activation</u>;</li> <li>The <u>facultative</u> nature could result in an <u>insufficient number</u> of persons protected and/or relocated;</li> <li><u>Facultative</u> nature may <u>not</u> be <u>sufficient to relieve pressure from certain MS</u>, plus:</li> </ul>	3	Medium at both EU and national level	Serious risk of violation of Art. 80 TFEU if the activation of the TPD leads to poor results and other EU acts manifestly do not contain appropriate measures to	Conditional upon: 3 Definition of reception capacity and identification of quantitative indicators, agreed at EU level (Theme 1); Additional funding/support for MS willing to take part in the scheme (option 4b).	3

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
	While at present MS reception capacity is not centrally recorded and no common tools to calculate or project reception capacity currently exist at EU level, quantitative indicators (similar to those used under Theme 1 to define pressure on the asylum system) could be developed.	<ul style="list-style-type: none"> <li>Create <u>poor</u> reception standards for beneficiaries.</li> </ul>			give effect to the principle of solidarity and fair sharing of responsibility.		
<b>Option 4.a.2</b> Mandatory distribution of persons eligible for temporary protection (via quantitative criteria)	MS are obliged to accept the share of persons as calculated by the competent body on the basis of the distribution key (and other quantitative indicators) as presented under option 4.a.1 (mandatory distribution).	<ul style="list-style-type: none"> <li>Common (quantitative) indicators help to establish a <u>transparent system</u>;</li> <li>While transparency may increase <u>support for activation</u>, this <u>may be neutralised</u> by resistance to the mandatory distribution;</li> <li>The mandatory nature <u>increases the number of persons protected and/or relocated</u>, though it may still cover an insufficient numbers of persons;</li> <li><u>Mandatory system may be better in relieving pressure from MS.</u></li> </ul>	4	Low medium EU level  Medium high national level	to Low risk of violation of Art. 80 TFEU if the activation of the TPD still leads to poor results and other EU acts manifestly do not contain appropriate measures to give effect to the principle of solidarity and fair sharing of	Similar to above	3.5



Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
					responsibility.		
<b>Option 4.a.3</b> If MS capacity is exceeded, Council uses distribution key to calculate the additional share of eligible persons that each MS should take on.	If MS reception capacity (as calculated with quantitative indicators developed under Theme 1 and presented under Option 4.a.1) is exceeded, the Council uses the distribution key (as developed under option 4.a.1) to calculate the additional share of eligible persons that each MS should take on. This option would thus push the reception capacity/saturation point of reception in MS, to respond to the mass influx.	<ul style="list-style-type: none"> <li>Common (quantitative) 2 indicators help to establish a <u>transparent system</u>;</li> <li>While transparency may increase <u>support for activation</u>, this <u>may be neutralised</u> by resistance to the mandatory nature of the system (especially shifting the saturation point of reception);</li> <li>The mandatory nature significantly <u>increases the number of persons protected</u> and/or relocated;</li> <li><u>Mandatory system may be better in relieving pressure from MS</u>;</li> <li>MS expected to face more <u>challenges</u> in terms of capacity or public support.</li> </ul>	2	Low medium EU level  Low national level	to Similar at above  at	to Similar to above	1.5
<b>4.b Sharing the costs</b>							
Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
<b>Status quo:</b> Each MS carries the financial burden for receiving persons eligible for TP. Council can recommend additional support.	At present, if the number of eligible persons represents a considerable pressure on the reception capacity of the MS, the Council can decide to allocate AMIF emergency funding. E.g. this is currently granted to IT and EL to face the challenges in the Mediterranean, and to FR and UK to cope with the emergency in Calais. Given the high priority given to the current crisis, support is likely to be disbursed without any specific problem to MS.	AMIF emergency funding is nowadays allocated to MS. The Council can decide on additional support (emergency funding). For MS under pressure. However a balance of efforts is not automatically promoted as long as other MS are not involved in a solidarity mechanism.	2	Not applicable	Not applicable	Not applicable	-
<b>Option 4.b.1</b> Once the TPD is activated, AMIF emergency funding is allocated to MS requesting it.	Funding is disbursed on the basis of the needs expressed by MS and following an assessment by the Council. Financial support is provided, upon request, to MS which accept a % of applicants relocated from the MS under pressure. This option is linked to option 4.a.1. A specific amount per relocated beneficiary could be earmarked, reflecting differences in GDP or labour costs of each MS.	<ul style="list-style-type: none"> <li>The facultative nature of financial support <u>increases the number of persons protected</u> and/or relocated, though it may still be insufficient;</li> <li>A fair allocation of financial support will <u>reward MS efforts</u>, but is <u>unlikely to achieve a balance of efforts</u> given the investment MS relocating and/or receiving a higher share in terms of infrastructure, capacity-building, etc.</li> </ul>	2.5	High at EU level  Medium High national level	Still risk of violation of article 80 TFEU if the envisaged mechanism of financial solidarity and other EU acts manifestly do not contain appropriate measures to	Sufficient financial resources should be earmarked to support MS willing to take part in the scheme.	2.5

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
		The latter could be addressed via the combination of this PO with POs under 4.a.			give effect to the principle of solidarity and fair sharing of responsibility.		
<b>Option 4.b.2</b> Once the TPD is activated, AMIF emergency funding is automatically allocated to MS.	Identical to Option 4.b.1, but this would introduce an <i>automatic</i> disbursing rather than upon MS request.	<ul style="list-style-type: none"> <li>The automatic disbursing of 4 financial support <u>may further increase the number of persons protected</u> and/or relocated, though it may still be insufficient;</li> <li>A fair allocation of financial support will <u>reward MS efforts</u>, <u>but is unlikely to achieve a balance of efforts</u> given the investment MS relocating and/or receiving a higher share in terms of infrastructure, capacity-building, etc.</li> </ul> <p>The latter could be addressed via the combination of this PO with POs under 4.a.</p>		High at EU level  Medium at national level	Similar above	Sufficient financial resources should be earmarked to support those MS covered by the scheme.	3.5
<b>Option 4.b.3</b>	Building on the two previous options, a new emergency fund is created and administered by COM to allocate	<p>Similar to above.</p> <ul style="list-style-type: none"> <li>The idea of establishing a new fund may be met with</li> </ul>	1.5	Low at EU level	Similar above.	Sufficient financial resources should be earmarked to	0.5

Policy Option	Description	General objectives	Rating option	Political feasibility	Legal feasibility	Operational considerations	Rating feasibility
A new fund dealing with emergency crisis	funding to MS whose reception capacities are exceeded. Direct funding would be automatically allocated (without a request). However, this option is also conditional on how reception capacity is defined and agreed upon among MS and how the new fund is established and administered. This option is linked to option 4.a.3.	scepticism regarding the need for, and bureaucratic burden of, a brand new instrument.		Low at national level		support MS covered by the scheme;  This option is also conditional to the decision-making process related to the newly established fund.	

The TPD includes a mechanism to pursue solidarity among Member States, via financial support and physical relocation based on the principle of “double volunteerism”. However, under the status quo, key features of this mechanism could hamper its effective and efficient implementation and thereby undermine its key objectives, i.e. promotion of a spirit of solidarity and a balance of efforts between Member States bearing the consequences of receiving beneficiaries of temporary protection. This particularly concerns the principle of “double volunteerism” and the lack of common indicators to estimate or quantify reception capacity (see Chapter 4).

All proposed **policy options**, to different degrees, aim to achieve a balance of efforts between Member States. In addition to the promotion of a balance of efforts, Art. 80 TFEU also requires the “fair-sharing of responsibility”. Consequently, the POs also aim to provide for a fairer and more proportional distribution system among Member States (POs 4.a.1, 4.a.2 and 4.a.3), while solidarity across Member States will also be rewarded by financial support (POs 4.b.1, 4.b.2 and 4.b.3).

POs **4.a.1, 4.a.2 and 4.a.3** are based on a **distribution key which defines Member State capacity on the basis of a range of commonly agreed indicators** (as further analysed for the assessment of Policy Option 1). Under all policy options, the solidarity principle would be more transparent and acceptable to Member States, thereby promoting and contributing to achieving a balance of efforts and a fair-sharing of responsibility between Member States. While the impact on achieving the objectives is likely be greater with option 4.a.2 (mandatory mechanism) than with option 4.a.1, (where Member States would still be entitled to confirm, reject or propose revisions suggested by the competent body, the effect could be neutralised by resistance to the mandatory nature of the system (especially shifting the saturation point of reception). Under PO 4.a.3 all Member States would be under the obligation to accept a proportionally higher number of persons, even if exceeding their available reception capacity. The impact would be higher as a direct consequence of the larger number of eligible persons. However, agreement on this may not be easily reached, as it would shift or redefine the saturation point for reception capacity in Member States.

In parallel, **funding** will be disbursed to Member States which accept a given % of applicants relocated from the Member State under pressure. Options 4.b.1 and 4.b.2 are respectively linked to 4.a.1 and 4.a.2. The allocation of funding is the flipside of Member States’ agreement to receiving a given % of eligible persons. Reaching EU-wide agreement on the definition of reception capacity and on the quantitative indicators to calculate it, plus earmarking sufficient financial resources are preconditions to implementing these options. However, the allocation of additional funding in itself may not suffice in helping Member States address the pressure on their asylum system: there could still be a need to recruit human resources, to provide for training or to build or arrange additional reception facilities (while still undergoing/adopting budget cuts in line with the austerity measures). Additional burden is represented by the social/cultural integration needs of the beneficiaries relocated. The effectiveness of Member State actions will also depend on the speed with which the funds are earmarked and disbursed: in the face of cumbersome procedures, these options are likely to fail meeting the need to provide immediate protection. Options 4.b.3 mirrors the same reservation made for Option 4.a.3: Member States are unlikely to agree on an additional fund to support a mechanism which “obliges” them to be exposed to a decision which goes beyond their declared thresholds. This option would also create additional administrative burden by establishing a brand new instrument. Member States support would also be conditional to the decision-making process related to the fund.

On the basis of the above analysis, the combination of **options 4.a.2 and 4.b.2** (mandatory distribution of persons based on a distribution key, backed by the automatic allocation of financial support proportionate to effort) would constitute the preferred

policy option, in terms of effectively meeting TPD objectives and gaining political support.

However, a formal amendment of the TPD and the adoption of a 'recast' Directive would require the Commission and Member States to engage in lengthy negotiations with uncertain results (as further discussed in the Chapter 7).

## 7 Continued relevance of the TPD and an amended TPD in comparison with the new proposals for (emergency and permanent crisis) relocation mechanisms

The Terms of Reference required to address the relevance of the TPD to the EU's challenges in light of to mass inflows of displaced persons: the analysis presented in Chapter 5 fulfils this task. In this Chapter, the Study team focuses on an analysis of the continued relevance of the TPD and its proposed amended version in comparison with the new proposals for (emergency and permanent crisis) relocation mechanisms.

From the assessment of the policy options conducted in Chapter 6, it follows that overall the "hybrid preferred policy option" would include:

- Thematic area 1 (criteria): Policy options 1.a.1 and 1.a.2 include respectively a non-exhaustive list of **typologies of mass influx** and indicators for measuring mass influx are proposed in conjunction with policy options 1.b.1 and 1.b.2 respectively on a non-exhaustive list of the **type of pressures** that national asylum systems may experience as a result of the mass influx and relative indicators;
- Thematic area 2 (procedure): Policy option 2.1.b envisages the obligatory **factual check of the criteria** for mass influx and/or national pressure by **EASO**, with **COM** assessing whether or not to put forward a proposal and the **Council/EP** ultimately deciding on the activation;
- Thematic area 3 (rights): The **selective alignment** with the rights granted to asylum seekers in the recast RCD during the first **six months** of temporary protection and, if extended to nine months, to those benefiting from subsidiary protection in the recast QD (option 3.b.7). The **full alignment with the Return Directive** is an obligation under the current asylum and migration acquis (option 3.c.1);
- Thematic area 4 (solidarity): Policy option 4.a.2 establishes a **mandatory relocation system** (based on quantitative indicators, with neither voluntarism for the person relocated or for the receiving Member State) supported by an **automatic allocation of funding** to Member States receiving a given % of eligible persons (option 4.b.2).

Crucially, however, in view of the current migration/refugee crisis and as a follow-up to the European Agenda on Migration, the Commission has adopted a package of measures to relieve the pressure on national asylum systems and the CEAS. These include:

- Emergency relocation mechanism to relocate 40.000 asylum seekers from Italy and Greece<sup>84</sup>;
- Emergency relocation mechanism to relocate 120.000 asylum seekers from Italy and Greece<sup>85</sup>;
- A permanent crisis relocation mechanism under the Dublin system<sup>86</sup>.

The new instruments represent a key development in the CEAS, in general, and in the measures available to the EU and the Member States to respond to a refugee/migration

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<sup>84</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece

<sup>85</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

<sup>86</sup> See: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal\\_for\\_regulation\\_of\\_ep\\_and\\_council\\_establishing\\_a\\_crisis\\_relocation\\_mechanism\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_ep_and_council_establishing_a_crisis_relocation_mechanism_en.pdf)

crisis or emergency. With regard to the Study at hand, these instruments could have significant implications on the continued relevance of not only the TPD in its present form, but also of an amended TPD.

Therefore, this section has the aim of comparing the new emergency and proposed permanent crisis relocation mechanisms with the TPD and the suggested revisions to the TPD (i.e. the hybrid preferred policy option described at the outset of this Chapter) in order:

To examine how, if at all, these instruments may work together to handle situations of mass influx; and

To draw conclusions as to the continued relevance, if any, of the TPD or an amended version of it.

Table 8 provides a brief overview of the main elements of the proposals vis-à-vis the TPD and the suggested revision of TPD/hybrid preferred policy option. It shows that the suggested changes to the TPD mirror many of the elements included in the new measures. While some differences persist, the relevance and added value of the TPD in handling possible future mass influx situations is drastically reduced in the face of these present proposals, as further discussed below.



Table 8. Provisional measures and crisis relocation mechanism vis-à-vis TPD

Elements	Provisional measures <sup>87</sup>	Provisional measures <sup>88</sup>	Crisis relocation mechanism	TPD	Revised TPD
Who eligible	is Applicants who are, <i>prima facie</i> , in clear need of international protection and for which the Member State in a crisis situation would have otherwise been responsible [under Dublin III Regulation]. Applicants are those belonging to nationalities for which, based on the latest available updated quarterly EU-wide average Eurostat data, the recognition rate is 75% or higher.	Applicants who are, <i>prima facie</i> , in clear need of international protection and for which the Member State in a crisis situation would have otherwise been responsible [under Dublin III Regulation]. Applicants are those belonging to nationalities for which, based on the latest available updated quarterly EU-wide average Eurostat data, the recognition rate is 75% or higher.	Applicants who are, <i>prima facie</i> , in clear need of international protection and for which the Member State in a crisis situation would have otherwise been responsible [under Dublin III Regulation]. Applicants are those belonging to nationalities for which, based on the latest available updated quarterly EU-wide average Eurostat data, the recognition rate is 75% or higher.	'Displaced persons who [...]are unable to return in safe and durable conditions to [their country or region of origin] because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular: (i) persons who have fled areas of armed conflict or endemic violence; (ii) persons at serious risk of, or who have been the victims of, systematic or	Same as cell on the left.

<sup>87</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

<sup>88</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

Elements	Provisional measures <sup>87</sup>	Provisional measures <sup>88</sup>	Crisis mechanism	relocation TPD	Revised TPD
				generalised violations of their human rights.' (Art. 2 (c))	
Criteria for triggering the mechanism	When Member State(s) are confronted with an emergency situation characterised by a sudden inflow of nationals of third countries;  When a certain threshold of urgency and severity of the problems created in the Member State(s)' asylum system(s) by a sudden inflow of third country nationals is met;  It includes quantitative indicators.	When Member State(s) are confronted with an emergency situation characterised by a sudden inflow of nationals of third countries;  When a certain threshold of urgency and severity of the problems created in the Member State(s)' asylum system(s) by a sudden inflow of third country nationals is met;  It includes quantitative indicators.	Where, on the basis of substantiated information, the Commission establishes that a Member State is confronted with a crisis situation (which places significant demands on its asylum system) due to extreme pressure characterised by a large and disproportionate inflow of third-country nationals or stateless persons;  It includes quantitative indicators.	In the event of an (imminent) mass influx of displaced persons from third countries who are unable to return to their country of origin;  If there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation;  It does not include quantitative indicators to define mass influx or pressure.	Quantitative indicators are used to <i>define</i> the concepts of "mass influx" and "pressure" and <i>measure</i> their occurrence in practice.
Geographical scope	EL, IT	EL, IT	Any EU MS, except DK (UK & IRL depending on opt-in)	Any EU MS, except DK (UK & IRL depending on opt-in)	Any EU MS, except DK (UK & IRL depending on opt-in)

Elements	Provisional measures <sup>87</sup>	Provisional measures <sup>88</sup>	Crisis relocation mechanism	TPD	Revised TPD
Date of entry into force	It applies to persons arriving on the territory of a MS as from the date of the entry into force of the Decision. The Decision will also be applied to applicants having arrived on the territory of the MS one month before the entry into force of this decision.	It applies to persons arriving on the territory of a MS as from the date of the entry into force of the Decision. The Decision will also be applied to applicants having arrived on the territory of the MS one month before the entry into force of this decision.	It applies to persons arriving on the territory of a MS as from the date of the entry into force of the Decision. The Decision will also be applied to applicants having arrived on the territory of the MS one month before the entry into force of this decision.	The Council sets the date on which the temporary protection will take effect.	The Council sets the date on which the temporary protection will take effect.
Duration	2 years	2 years	COM sets the period of application of the crisis relocation mechanism.	From 1 to up to 3 years	6 + 3 months (as foreseen by the Asylum Procedures Directive)
Rights	Access to international protection	Access to international protection	Access to international protection	Temporary protection (lower)	Rapid access to procedure for international protection as per above.  Temporary protection, with rights equal to beneficiaries of subsidiary protection (recast QD) and of short duration.

Elements	Provisional measures <sup>87</sup>	Provisional measures <sup>88</sup>	Crisis mechanism	relocation TPD	Revised TPD
Procedures	Council decision (majority) on COM proposal (based on EASO and Frontex data)	Council decision (majority) on COM proposal (based on EASO and Frontex data)	COM by delegated acts (based on EASO and Frontex data). EP/Council have 1 month to object.	Council decision (qualified majority) on COM proposal	Council decision (qualified majority) on COM proposal, based on factual check by EASO.
Number of persons to be relocated	40,000 persons (24,000 from IT and 16,000 from EL); [approximately 40 % of the total number of third-country nationals in clear need of international protection who have entered irregularly in Italy or Greece in 2014]  Relocation can be imposed on those eligible.	120,000 persons (15,600 from IT, 50,400 from EL and 54,000 as reserve due to HU refusal); [approximately 43 % of the total number of third-country nationals in clear need of international protection who have entered Italy and Greece irregularly in July and August 2015];  Relocation can be imposed on those eligible.	COM determines the number of persons to be relocated from a given MS, on the basis of a fixed distribution key;  Up to 40% of the number of applications lodged with that Member State in the previous six months;  Relocation can be imposed on those eligible.	Based on MS voluntary offer and on the consent of the transferee.	COM determines the number of persons to be relocated from a given MS, based on a fixed distribution key.
Distribution key	The size of the population (2014 figures, weighting);	The size of the population (2014 figures, weighting);	The size of the population (2014 figures, weighting);	Based on MS voluntary offer and on the consent of the transferee	Population size; Population density; Total GDP ;

Elements	Provisional measures <sup>87</sup>	Provisional measures <sup>88</sup>	Crisis mechanism	relocation TPD	Revised TPD
	Total GDP (2013 figures, weighting); Average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014 (10% weighting); Unemployment rate (2014 figures, 10% weighting).	Total GDP (2013 figures, weighting); Average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014 (10 % weighting, with a 30% cap of the population and GDP effect on the key); Unemployment rate (2014 figures, 10 % weighting, with a 30% cap of the population and GDP effect on the key).	Total GDP (2013 figures, 40% weighting); Average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014 (10 % weighting, with a 30% cap of the population and GDP effect on the key); Unemployment rate (2014 figures, 10 % weighting, with a 30% cap of the population and GDP effect on the key).		Asylum figures, including: Average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014; Recognition rate; Etc. (see Section 6.2, Theme 1); Reception capacity (see Section 6.2); Unemployment rate; Etc.
Nature of the distribution	Facultative	Facultative; Financial contribution to the EU budget of an amount of 0,002 % of GDP if not part to the relocation scheme.	Mandatory; Financial contribution to the EU budget of an amount of 0,002 % of GDP if not part to the relocation scheme.	Facultative	Mandatory
Financial support	It provides for a specific lump sum of	It provides for a specific lump sum of	No implication for the EU budget. The	No specific implication for the	It automatically disburses a specific

Elements	Provisional measures <sup>87</sup>	Provisional measures <sup>88</sup>	Crisis mechanism	relocation TPD	Revised TPD
	6,000 EUR to be allocated to MS for any person taken in charge under the scheme	6,000 EUR to be allocated to MS for any person taken in charge under the scheme. With regard to the costs of the transfer, MS receive a lump sum of EUR 500 for each person relocated from their territory.	implications of the activation of the framework will be assessed in relation to the specific circumstances of given Member States.	the EU budget. The Council will have to recommend additional support for Member States affected and Member States can request activation of AMIF support	The lump sum of for each person relocated to the MS under the scheme, adjusted on the basis of GDP and labour costs.

On the basis of the information reported in the table above, some main reflection points on the new proposals are drawn below per thematic area of the policy options. This structure allows to systematically compare the elements included in the new mechanisms with the main ones provided for by the TPD and its proposed revised version.

**Thematic area 1 (criteria):** All three instruments provide for **objective, quantifiable and verifiable criteria and data** to be taken into account when adopting a decision on the activation of the instruments. These help clarify concepts related to “mass/large influx” or “pressure” which in the TPD are vague and left open to interpretation (and which ultimately did not allow to reach a decision on what constituted the threshold to be met for the TPD to be considered). Unfortunately, the concept of **capacity** of the asylum system remains unclarified: it would be important to have a dynamic and relative mechanism able to determine asylum capacity (with number of relocations changing with flows).

- The use of a **distribution key** is an important step forward to ensure a fair distribution of asylum seekers among Member States. In particular, a) the size of the population reflects the capacity of a Member State to absorb a certain number of refugees; b) the total GDP refers to the absolute wealth of country and is indicative for the capacity of an economy to absorb and integrate refugees; c) the average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014 reflect the efforts made by Member States in the recent past; and d) the unemployment rate the capacity to integrate refugees. Other elements to consider are population density (e.g. Malta) and recognition rate (e.g. how many actually remain within the Member State where they have registered/entered and require support with reception, processing and integration).
- **Thematic area 2 (procedure):** The **provisional measures are not automatically activated**, but they are conditional to both a proposal put forward by the Commission and a favourable vote within the Council, after due consultation with the European Parliament: a balance of efforts will still be conditional on the political support of Member States, though the agreement could still result in an insufficient number of persons to be redistributed. On the other hand, the procedures foreseen by the **crisis mechanism** give more power to the Commission (under delegated acts). This may allow the EU to respond **more quickly** to an urgent situation and help Member States facing an emergency situation, without having to go through a lengthy adoption procedure by the Council each time (which is the case under the current TPD or provisional measures mechanisms).
- **Thematic area 3 (rights):** The provisional measures, and to a certain extent the crisis mechanism, would not guarantee immediate protection to large(r) inflows of displaced persons who may be considered eligible for international protection as foreseen in the Qualification Directive (numbers are relatively low as compared to the overall scale of arrivals and people in need of protection), though it would guarantee access to international protection – and not temporary as foreseen by the TPD.
- **Thematic area 4 (solidarity):** An agreement was reached on **both proposals** (concerning 40,000 and 120,000 persons), though not without political frictions, lengthy discussions and questions raised on how the total number of eligible persons was calculated and whether it can be considered sufficiently high. Arguably, the well-defined, and rather limited, number of people concerned and the relatively high likelihood for these to be granted international protection has made the first proposal for provisional measures appealing also to Member States sceptical to the proposition of redistribution. In addition, the allocation of

additional funding may have increased their will to cooperate though in itself it may not suffice to help MS address the pressure on their systems (see Section 6.4). The higher number of persons to be redistributed under the second proposal for provisional measures (120,000) and the obligatory financial compensation from those Member States who refuse to have eligible persons relocated to their territories were adopted by the Council despite the clear opposition of a minority of Member States. Furthermore, the establishment of a permanent crisis relocation mechanism within the framework of the Dublin III Regulation suggests that Member States may be unlikely to reach an agreement in the near future: Member States may be highly unwilling to delegate too much power to the Commission, while automatically accepting quotas (or financial compensation) once a decision is taken.

The use of a distribution key is an important step forward to ensure a fair distribution of persons in need of international protection among Member States.

From this analysis it follows that many of the elements which are suggested to make the TPD a stronger, more transparent and effective instrument are reflected, to a large extent, in the new instruments proposed by the Commission (and mostly by the permanent crisis mechanisms). The main **differences** between a proposal for the revision of the TPD and the new instruments would be related to i) the scope of the instruments in terms of the number of the persons eligible to be relocated and ii) the status and the rights accorded to the persons eligible and iii) the circumstances in which the relocation can be triggered. While these three elements could indicate a continued relevance for the TPD (i.e. a revised TPD may affect a larger number of third-country nationals, though covered by a different status), the new crisis mechanism guarantees for a higher (yet not necessarily harmonised) level of rights and quicker activation procedures.

As such, it seems more likely that the Commission will pursue the adoption and usage of the provisional measures to tackle the current crisis and, at the same time, attempt to revise the current Dublin III Regulation with the possibility to include a permanent crisis relocation mechanism. Consideration could be given to incorporating some of the residual advantages of the TPD in such a mechanism, including in particular a broader personal scope (not just applying to persons from countries of origin with a 75%+ recognition rate) and a broader definition of the circumstances in which emergency relocation could be triggered. This would prevent the Commission and Member States from spending political capital trying to amend the TPD, with uncertain results and if the residual advantages just mentioned were to be incorporated in a Commission proposal, consideration could be given to proposing the repeal of the TPD. The new instruments will be the result of complex and politically sensitive negotiations between Member States and represent a compromise aiming to accommodate their different positions, while safeguarding the obligation to protect persons in need of international protection. It is, however, pertinent that a crisis mechanism is made operational, if the clogging up of national asylum systems and a variety of national temporary protection regimes are not to persist in a time of crisis, with potential secondary movements as a result.



## **Annexes**

## Annex 1 National forms of temporary protection<sup>89</sup>

Temporary protection regimes are classically implemented as emergency responses to mass influx situations and are mostly introduced by first countries of asylum and other host states which cannot cope with large scale influx situations by implementing individual refugee status determination. However, sometimes temporary protection refers to national protection statuses which grant a time limited protection for humanitarian purposes to persons who fall outside the scope of the 1951 Convention.<sup>90</sup> These type of temporary protection statuses are not necessarily associated with a mass influx situation.<sup>91</sup> It should be also noted that in some cases, the protection statuses or policies do not have the expression 'temporary protection' as such but, in reality, the nature of the protection provided involves the same practical effect as other temporary protection schemes.<sup>92</sup> This means, a temporary protection status does not necessarily have *temporary protection* in its title, whilst still qualifying as having this status. Mindful of these issues, many European states introduced national temporary protection schemes and statuses based on their domestic legislations or administrative decisions taken by the government authorities<sup>93</sup> to protect Bosnians and Kosovars fleeing war and violence throughout the 1990's.

In 1992, UNHCR introduced the concept of temporary protection as an element of the 'Comprehensive Response to the Humanitarian Crisis in Former Yugoslavia'<sup>94</sup> and urged states to introduce temporary protection regimes for the protection of Bosnians.<sup>95</sup> In response to this call, many European states introduced national temporary protection schemes and statuses to protect Bosnians.<sup>96</sup> The European states protected Bosnians mostly under national humanitarian statuses and temporary protection statuses.<sup>97</sup> Each state invoked different eligibility criteria to grant Bosnians temporary protection.<sup>98</sup> For example, Austria granted temporary protection to "citizens of Bosnia and Herzegovina

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<sup>89</sup> Annex 2 is taken verbatim from Meltem INELI-CIGER (2015). Temporary Protection in International Law and State Practice. PhD Thesis, University of Bristol Social Science and Law Faculty.

<sup>90</sup> UNHCR, 'Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence' (UNHCR 2011) < <http://www.refworld.org/docid/4e2ee022.html> > accessed 1 August 2015, 92.

<sup>91</sup> J. Thorburn, 'Transcending Boundaries: Temporary Protection and Burden-Sharing in Europe' (1995) 7(3) IJRL 461; N. Yakoob, 'Report on the Workshop on Temporary Protection: Comparative Policies and Practices' (1998-1999) 13 Georgetown Immigration Law Journal 620, 621; Edwards (Introduction Chapter footnote 35) 602, 603; K. Hailbronner, 'Temporary and Local Responses to Forced Migrations: A Comment' 35 Virginia Journal of International Law 89-92.

<sup>92</sup> Commission of the European Communities 'Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof' Brussels, 24 May 2000, COM(2000) 303 final 2000/0127 (CNS), para 2.4.

<sup>93</sup> Thorburn (n 2) 462, 464.

<sup>94</sup> D. Sopf, 'Temporary Protection in Europe After 1990': The "Right to Remain" of Genuine Convention Refugees' (2001) 6 Journal of Law and Policy 127; UNHCR, 'A Comprehensive Response to the Humanitarian Crisis in the Former Yugoslavia' 24 July 1992, HCR/IMFY/1992/2 < <http://www.refworld.org/docid/438ec8aa2.html> > accessed 1 August 2015.

<sup>95</sup> UNHCR 'A Comprehensive Response' (n 5) para 12-14; Thorburn (n 2) 470.

<sup>96</sup> UNHCR, 'The State of the World's Refugees: A Humanitarian Agenda' 1 January; Humanitarian Issues Working Group, 'Survey on the Implementation of Temporary Protection', 8 March 1995, 1. (hereinafter the Survey)

<sup>97</sup> J. Van Selm, *Refugee Protection in Europe: Lessons from the Yugoslavian Crisis* (Martinus Nijhoff Publishers 1998) 113-115, 177.

<sup>98</sup> Hailbronner (n 2) 89, 90; Sopf (n 5) 129.

who had to leave their country of origin due to armed conflict and who did not find protection elsewhere and entered Austria before 1 July 1993".<sup>99</sup> Differing from the Austrian practice, Denmark granted temporary protection on a group basis: they only required a person to have fled a certain part of FYR to qualify for temporary protection statuses.<sup>100</sup> France, as one of the states that introduced very strict eligibility criteria, required Bosnians to have 'come directly' to France.<sup>101</sup> In Germany, "temporary protection is mostly granted to failed asylum seekers as a group on the basis of a collective decision not to return or deport persons in regions of active war"<sup>102</sup>

As for the rights and entitlements provided to the temporarily protected persons, there was no common European approach.<sup>103</sup> Each host state granted different sets of right to Bosnians. In Germany, many Bosnians were protected under *duldung* and *aufenthaltsbefugnis* statuses.<sup>104</sup> Aside from these statuses, nearly 15,000 "Bosnians were granted temporary protection by decisions of the federal Government, in consultation with the federal states of Germany (the Länder) on the basis of Article 54 of the Aliens Act."<sup>105</sup> In view of these different statuses, the rights and entitlements of Bosnians in Germany varied depending on which Länder they were admitted to.<sup>106</sup> In many Länder, Bosnians were granted monthly welfare payments and could access medical care.<sup>107</sup> Bosnians were accommodated both in public and private premises and given a limited right to work in Germany, Austria, Denmark and the Netherlands.<sup>108</sup> Similarly, Germany and Austria granted Bosnian children access to education.<sup>109</sup> Despite these similarities, access to labour markets and family unification was regulated differently in each state.<sup>110</sup> For instance, Germany did not grant Bosnians an unlimited right to family unification.<sup>111</sup> The German government also did not grant Bosnians an unlimited right to work.<sup>112</sup> In addition to these differences, each state regulated the set

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<sup>99</sup> Survey (n 7) 5; I. Stacher 'Austria: Reception of Conflict Refugees' in J. Van Selm (ed), *Kosovo's Refugees in the European Union* (Pinter 2000) 125.

<sup>100</sup> Amnesty International (AI), 'Bosnia-Herzegovina: "Who's Living in My House?": Obstacles to the Safe Return of Refugees and Displaced People' 19 March 1997, EUR 63/001/1997, 20-30.

<sup>101</sup> Survey (n 7) 18.

<sup>102</sup> Hailbronner (n 2) 91.

<sup>103</sup> Van-Selm (n 8) 174; J. Van Selm, 'The Netherlands: the Few Who Have Made it "won't be Staying"' in J. Van Selm (ed), *Kosovo's Refugees in the European Union* (Pinter 2000) 48; K. Kerber, 'Temporary Protection in the European Union: A Chronology' (1999-2000) 14 Georgetown Immigration Law Journal 37; AI 'Who's Living in My House?' (n 11) 20-30; F. Mansouri, M. Leach, A. Nethery, 'Temporary Protection and the Refugee Convention in Australia, Denmark and Germany' (2009) 26(1) Refuge 140.

<sup>104</sup> Survey (n 7) 23; AI 'Who's Living in My House?' (n 11) 17; Mansouri et al. (n 14) 140; Koser K., Walsh M., Black R., 'Temporary Protection and Assisted Return of Refugees from the European Union' (1998) 10(3) IJRL 453, 454.

<sup>105</sup> AI 'Who's Living in My House?' (n 11) 16, 17.

<sup>106</sup> Survey (n 7) 24.

<sup>107</sup> Sirin N. A., 'Back Home? : The Reality of Return in Bosnia Herzegovina and the Role of the European Union in the Return process' (Unpublished PhD thesis, Marmara University 2005) 192, 193.

<sup>108</sup> B. Berg, 'From Temporary Protection to Permanent Residence: Bosnian Refugees in Scandinavia' in K. Hastrup and G. Ulrich (eds), *Discrimination and Toleration* (Kluwer Law International 2002) 55-72; Survey (n 7) 17, 18, 35; Stacher (n 10) 125-127; Van-Selm (n 8) 201, 202; Sirin (n 18) 196.

<sup>109</sup> Stacher (n 10) 125-127; Van-Selm (n 8) 202; Survey (n 7) 17, 18.

<sup>110</sup> Onken (n 24) 201.

<sup>111</sup> Survey (n 7) 24; J. C. Hathaway, R. A. Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997) 10 Harv. Hum. Rts. J. 129.

<sup>112</sup> Survey (n 7) 24.

of rights offered to the temporary protection beneficiaries, the duration of temporary protection and the end of temporary protection, differently.<sup>113</sup>

As for the protection of displaced persons from Kosovo, Under the Humanitarian Evacuation Programme (HEP) nearly 96,000 Kosovars were evacuated from Macedonia and transferred to 28 states. Kosovars were protected in the European states under two categories: Kosovars who arrived to the territories of the host states by their own means and, persons who were transferred to the host states under the evacuation programmes.

<sup>114</sup> Some states treated the latter more favourably than the former.<sup>115</sup> The European states, including Germany, Austria, Sweden and France provided the Kosovars that were evacuated through the HEP and granted temporary protection shelter, basic minimum treatment, and emergency medical treatment as well as temporary residence permits that ranged from 3 to 11 months.<sup>116</sup> A review of the temporary protection of Bosnians and Kosovars in Europe provides that there was no unified or collective approach to temporary protection. As a result, the criteria for determining persons eligible for temporary protection, the set of rights offered to the temporary protection beneficiaries, the duration of temporary protection and the regulation of termination of temporary protection regimes were different in each state. This has been also the case for the national temporary protection schemes and statuses to protect Iraqis and Syrians fleeing war and violence in the last decade due to lack of implementation of the Temporary protection directive.

Iraqis fleeing war and violence have been protected in Europe under different statuses<sup>117</sup> including being granted refugee status, subsidiary protection status and humanitarian or tolerated statuses.<sup>118</sup> Some European states have protected Iraqis under national temporary protection statuses.<sup>119</sup> These have been regulated differently in each state.<sup>120</sup> The ECRE noted in 2007 that some states had granted temporary protection to Iraqis whose asylum claims were rejected, but who could not be returned due to safety concerns.<sup>121</sup> One of the states that introduced national temporary protection status was Finland.<sup>122</sup> It issued temporary permits under a 'municipality of Residence Decree' in 2007 which allowed its holders access to the labour market and to municipal services.<sup>123</sup> Similarly, Romania and the Slovak Republic granted a limited number of Iraqis temporary protection.<sup>124</sup> In 2006, Sweden granted temporary protection for Iraqi

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<sup>113</sup> Van-Selm (n 8) 174; Kerber (n 14) 37; AI 'Who's Living in My House?' (n 11) 20-30; Koser et al. (n 15) 453, 454; Sopf (n 5) 129.

<sup>114</sup> Van Selm (n 8) 203.

<sup>115</sup> *ibid* 203.

<sup>116</sup> Amnesty International, 'The Protection of Kosovo Albanian Refugees' 19 May 1999, EUR 65/03/99 <<http://www.unhcr.org/refworld/docid/3ae6a9c914.html>> accessed 1 August 2015 9-12; Stacher (n 16) 132.

<sup>117</sup> *ibid* 17.

<sup>118</sup> H. Hintjens 'Nowhere to Run: Iraqi Asylum Seekers in the UK' (2012) 54(2) *Institute of Race Relations* 90.

<sup>119</sup> ECRE, 'Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered' March 2008 <<http://www.refworld.org/docid/47f1edc92.html>> accessed 1 August 2015, 15, 16.

<sup>120</sup> *ibid* 15, 16.

<sup>121</sup> *ibid* 15, 16.

<sup>122</sup> ECRE, 'Five Years on Europe is Still Ignoring Its Responsibilities Towards Iraqi Refugees' March 2008, AD1/03/2008/ext/ADC <<http://www.refworld.org/docid/47e1315c2.html>> accessed 1 May 2015, 5; ECRE, 'Guidelines on Treatment of Iraqi Asylum Seekers and Refugees in Europe' (2006) 18 (2) *IJRL* 464; European Migration Network, 'Synthesis Report, 'The Different National Practices Concerning Granting of Non-EU Harmonised Protection Statuses' (EMN 2010) 73.

<sup>123</sup> ECRE Five Years (n 33) 5; EMN 'The Different National Practices' (n 33) 73.

<sup>124</sup> ECRE 'Five Years' (n 33) 5.

asylum seekers from northern Iraq whose applications had been rejected are but who could not be forcibly returned.<sup>125</sup> As for the protection of Syrian asylum seekers, most EU Member States have been protecting Syrians under subsidiary protection and some through purely humanitarian statuses.<sup>126</sup> National temporary protection statuses were introduced only by a few Member States.<sup>127</sup> For example, under Germany's Temporary Humanitarian Admission programme, vulnerable groups among those who had fled Syria, including women, children, and members of religious minorities and refugees who had family ties with Germany, were evacuated from Lebanon and admitted to Germany temporarily.<sup>128</sup> Under this programme, Syrians are given two year renewable residence and work permits and some of them are deemed eligible to receive unemployment benefits.<sup>129</sup>

Member States, instead of implementing temporary protection under a formalised regime, have so far opted to introduce national temporary protection statuses. A European Migration Network (EMN) Study indicates that, Austria, Belgium, Greece, Ireland, Italy, Poland and Spain grant temporary protection under national statuses.<sup>130</sup> Under these national statuses, there are many discrepancies, especially in the level of rights provided to the status holders.<sup>131</sup> The EMN Report also notes that, the standard of protection provided under these national temporary protection statuses has been lower than the ones prescribed by the Directive.<sup>132</sup>

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<sup>125</sup> ECRE 'Guidelines on Treatment of Iraqi Asylum Seekers' (n 33) 463.

<sup>126</sup> *ibid* 15, 16.

<sup>127</sup> C. Orchard, A. Miller, 'Protection in Europe for Refugees from Syria' (Refugee Studies Centre 2014) 1-77.

<sup>128</sup> *ibid* 57, 58.

<sup>129</sup> *ibid* 57, 58.

<sup>130</sup> EMN 'The Different National Practices' (n 33) 28.

<sup>131</sup> *ibid* 30.

<sup>132</sup> *ibid* 31.f

## Annex 2 Case Studies

### Belgium 2008-2012

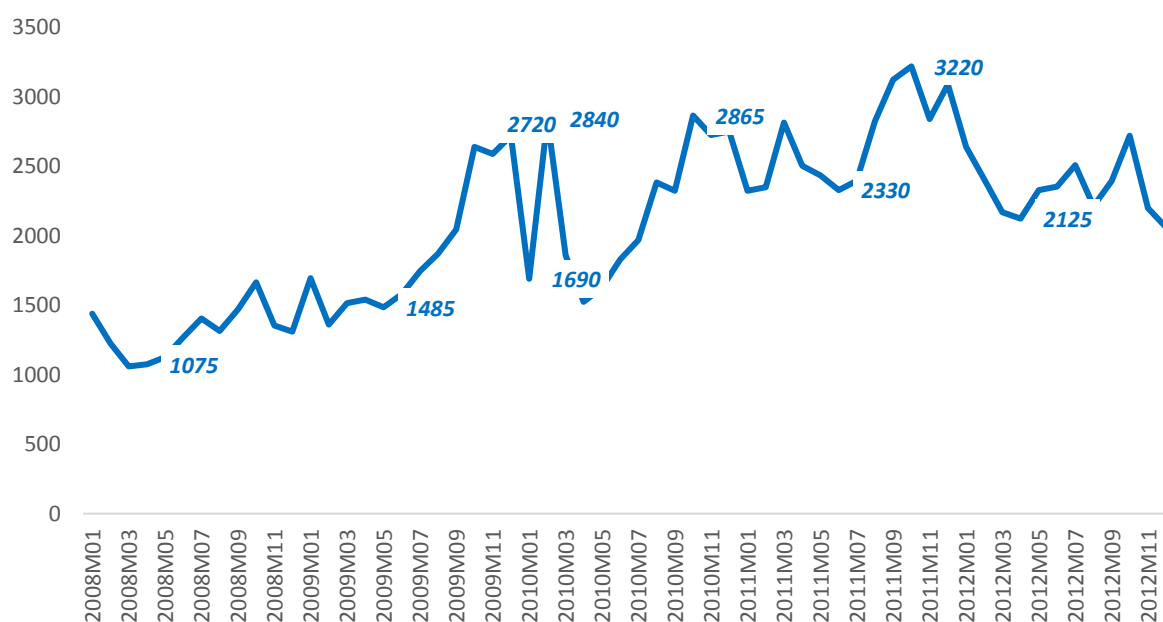
The Study Team identified a possible case of mass influx/pressure during 2008-2012 in Belgium, when the number of applications doubled in three years from 15,700 in 2008 to 32,300 in 2011<sup>133</sup>. The increase exerted much pressure on the Belgian reception capacity, with applicants accommodated in overcrowded existing reception facilities, in sub-optimal emergency structures and 12,000 applicants who could not be accommodated at all (from mid-2008 to beginning 2012)<sup>134</sup>. Belgium, in its survey, confirmed this situation to have been a situation where the national asylum system was under pressure rather than a situation of mass influx.

#### Overview of the increase in the number of applications

During the years 2008-2012 Belgium experienced a significant increase in the total number of asylum applicants. As can be seen in Figure 6, the total number of applicants went up from 15,700 in 2008 to 22,800 in 2009, 26,400 in 2010 and 32,300 in 2011, after which figures dropped to 2009 levels in the period 2012-2014. Between May 2010 and November 2010 figures rose from 1,485 to 2,640, an increase of 78% over this period.

The case of Belgium is interesting given the absence of very large monthly increases, but rather concerns consistently high numbers of asylum figures in 2009, 2010 and 2011 compared to the preceding period in 2008 (and 2006 and 2007, when annual figures were below 10,000).

Figure 6. Total number of asylum applicants between 2008 and the end of 2012

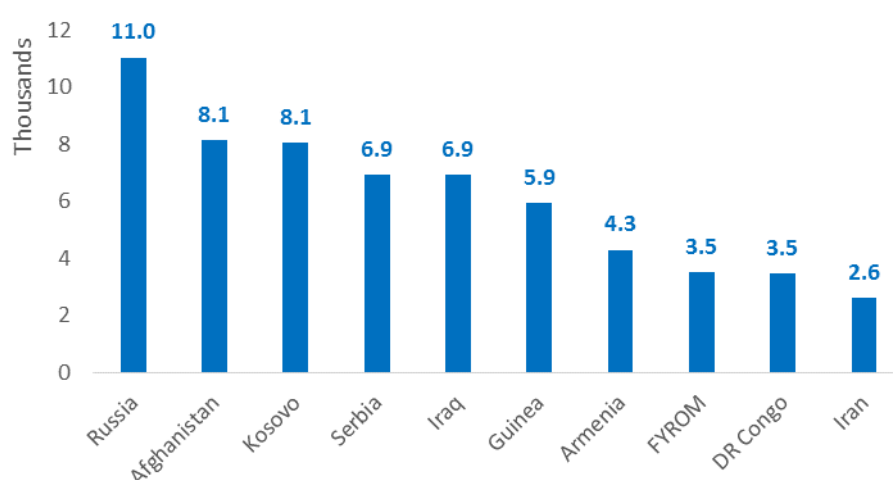


<sup>133</sup> Eurostat data.

<sup>134</sup> Survey and EMN Report on Reception Facilities.

In the years 2008 up to 2012 the total number of applicants was 97,145. When considering the main nationalities of applicants, six third countries account for nearly 50% of applicants (at 46,980), whereas the first ten third countries account for 63% of applicants. Figure 7 highlights the main ten third countries of origin. Between the four years there are few differences in the main nationalities, though the number of applicants from FYROM and Serbia was much higher in 2010-2011 than in the years 2008-2009.

Figure 7. Total number of asylum applicants by main nationalities



### Consequences of the increase on the national asylum system

Belgium reported that the increase in the number of applications resulted in a **reception crisis** from mid-2008 until the beginning of 2012. During this period existing facilities worked with surplus capacity, many applicants were accommodated in emergency structures and/or low-cost hotels with poor social assistance, and more than 12,000 applicants could not be accommodated at all<sup>135</sup>. The body responsible for organising reception in Belgium, i.e. FEDASIL, was condemned several times by the Labour Court which instructed FEDASIL to pay fines to applicants for international protection who could not be accommodated on several occasions.

Moreover, the increase in the number of applications also exerted pressure on the **processing of applications**. The ratio of case workers compared to the number of applications decreased and the number of pending cases increased from 21,320 in 2008 to 40,040 in 2011<sup>136</sup>. In practice, this resulted in an increase of processing time following which applicants also had to stay longer in reception facilities (if accommodated).

The reception crisis also had a considerable impact on the **budget**, as the government was required to finance counter-measures described below.

### Management of the situation

<sup>135</sup> Survey and EMN Report on the Organisation of Reception Facilities.

<sup>136</sup> Survey.

At national level, Belgium implemented a package of several legislative, practical and operational measures in **response** to the increase of applications, addressing every part of the asylum and reception system (its approach can be characterised as “chain management” which was identified as a good practice in the EMN Report on the Organisation of Reception Facilities).

The measures included the following:

- Legislative changes regarding the categories of applicants eligible for reception, thereby **limiting the inflow** of applicants to reception facilities;
- Implementation of information prevention campaigns in the Western Balkan countries to counter a high number of unfounded applications (**limiting inflow**);
- Creation of new/extended reception capacity to ensure sufficient **reception capacity**: the number of reception places increased from 15.000 in 2007 to 25.000 in 2012;
- Speeding up the **asylum procedure** by recruiting new case workers: In 2011, the CGRS recruited nearly 100 persons extra personnel;
- Speeding up the **asylum procedure** by fast-tracking procedures: For example, applicants originating from safe countries of origin were processed in accelerated procedures and the asylum instances also sometimes applied the “last-in-first-out” principle;
- Speeding up the **outflow from reception facilities** by introducing legislative changes limiting the possibilities for rejected applicants to stay in the country and/or to lodge a subsequent application;
- Reinforcement of **return policy** by adopting a new law introducing an individualised return path and stimulating voluntary return.

The government also increased its national budget to cover for the costs of these measures.

At EU level, Belgium was also granted more than 4.6 million EUR ERF funding to help deal with the high pressure in 2011. The funding allowed Belgium to increase its national budget and to cover the costs of recruiting extra personnel and the creation of extra places in reception facilities.

### **Impact of the support provided**

BE reports in the Survey that the measures as described above proved successful, although it initially took some time. The capacity of the reception network increased from around 16,000 in 2007-2009 to 24,000 places in 2012 and the recruitment of asylum case workers led to a higher number of decisions. The CGRS made 16, 828 asylum decisions in 2011 which was an increase of 45% compared to 2010 and of 87% compared to 2009. Reception capacity thus increased, whilst asylum processes were more rapidly dealt with. The Survey reports that the combination of measures eventually led to a turning point in the beginning of 2012 when the reception centres were no longer saturated and the number of applications also started to decrease.

The successful handling of the reception crisis is, according to the Belgium National Report on the “Organisation of Reception Facilities” the result of an integrated policy on



asylum, reception, and return (chain management), managing the reception of applicants as part of a larger process (inflow, reception, asylum procedure, return).

## Bulgaria 2013-2014

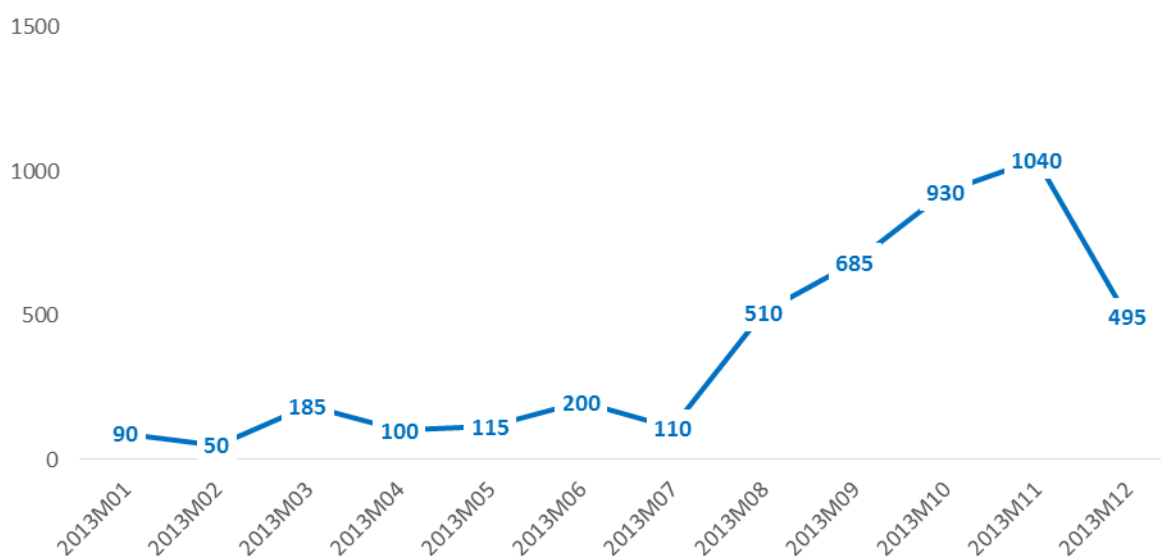
The Study Team identified a possible case of mass influx in Bulgaria in 2013-2014. In the Survey submitted by Bulgaria, Bulgaria confirms that it experienced a situation of significant pressure during these years, reporting that the sudden high increase exceeded the capacity of the Bulgarian reception capacity.

### Overview of the increase in the number of applications

In 2013, Bulgaria experienced a significant increase in the number of applications lodged for international protection. From January 2013 until August 2013 the total number of applications was five times higher in comparison to the same period in 2012. Overall, the total number of applications lodged in 2013 amounted to **7,145**<sup>137</sup>, compared to 1,385 in 2012, which constituted a rise of 416%. The number of applications continued to increase in 2014 to a total number of **11,081**. The number of asylum applications increased more than **four-fold** between April and December 2014.

A high share of the increase includes Syrian applicants, for whom the total number of applications increased from a total of 110 in July 2013 to 1,040 in November 2013, as indicated by Figure 8.

Figure 8. Influx of refugees from Syria, peaking in November 2013



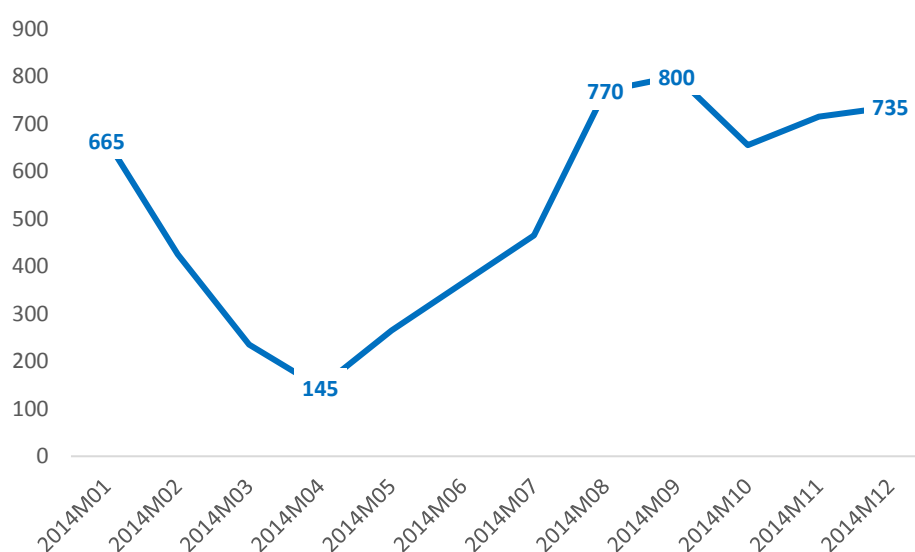
Although not a traditional receiver of Syrian migrants and refugees, Bulgaria has become particularly overwhelmed with inflows of Syrian asylum seekers, especially as Greek security operations diverted Syrian flows to the Bulgarian-Turkish land border [...]. Indeed, while Bulgaria received only 85 Syrian asylum claims in 2011, and nearly 450 in 2012, in the first eight months of 2013 numbers of Syrian asylum claims tripled in BG (1,360) [...]. In September 2013, UNHCR noted that Bulgaria's asylum centres

<sup>137</sup> Eurostat figures, migr\_asyappctzm

were “bursting at the seams as Syrians enter Europe”.<sup>138</sup> “Smugglers who used to lead migrants from Turkey into Greece are increasingly moving them to Bulgaria instead, in part due to the construction of a 10.5km fence at one of the most popular crossing points along the Turkish-Greek border.”<sup>139</sup>

In 2014, a relatively high number of Syrian applicants in January 2014 went down to 145 in April 2014 but ultimately peaked at 800 in September 2014, as can be seen in Figure 9.

Figure 9. Influx of refugees from Syria, peaking in September 2014



### **Consequences of the increase on the national asylum system**

Bulgaria reported that the significant increase resulted in much pressure being exerted on its national asylum system and created “serious difficulties”. It stated: “The Bulgarian system for asylum was unable to cope”. The AIDA report states that in 2013, Bulgaria had reception capacity of 805 beds. Seeing that a total of 7,145 applications were lodged in 2013, reception capacity proved highly insufficient. As a result, reception centres were severely overcrowded and overloaded to an extent that caused an utter institutional collapse of SAR. For example, 8 to 15 asylum seekers were accommodated in rooms equipped for a maximum of 2 to 4 persons and on “matrasses” in the corridors. In order to save space, families, including families with children were separated in violation of the ECHR. Moreover, asylum seekers were also kept in detention centres for irregular migrants or opted to declare that they do not need accommodation in order to be released from detention centres, but afterwards remained homeless. According to the official statistics, as of 31 March 2014, 3,358 asylum seekers resided at external

<sup>138</sup> Christine Marie Fandrich, A Comparative Study on the Asylum Landscapes within the EU for Iraqis after the 2003 Iraq War and Syrians after the 2011 Syrian Civil War (EUI, 2013, available at: [http://cadmus.eui.eu/bitstream/handle/1814/29059/RSCAS\\_2013\\_89.pdf?sequence=3](http://cadmus.eui.eu/bitstream/handle/1814/29059/RSCAS_2013_89.pdf?sequence=3))

<sup>139</sup> IRIN News. (22 October 2013). Syrians face bleak time in Bulgaria’s broken asylum system. <http://bit.ly/16tbRrk>

addresses at their own expenses<sup>140</sup>. Emergency facilities were also established which however did not meet basic standards and were rather described as amounting to inhuman and degrading treatment as it included accommodation in tents and containers, without electricity and sewerage under extremely poor living and hygiene conditions<sup>141</sup>.

The pressure exerted further also had adverse effects on **the processing of applications**. The number of staff carrying out placement of applicants to reception centres was insufficient. Similarly, the number of staff members processing applications was equally insufficient and processing time increased and the backlog of cases grew. The latter was emphasised to be the most significant problem, resulting in long asylum procedures for applicants.

In its observations on the situation in Bulgaria, published on 2 January 2014, UNHCR came to the conclusion that asylum seekers in Bulgaria faced a real risk of inhuman or degrading treatment due to systemic deficiencies in asylum procedures and reception conditions.

### **Management of the situation**

Bulgaria reported in its survey that following the pressure exerted, various measures were activated to cope with the situation, both at national as well as EU level.

At national level, the following measures were implemented, distinguishing between those aimed at prevention, mitigation and response:

#### **Prevention**

No measures reported.

#### **Mitigation**

- Mechanisms to speed up the asylum procedure: Bulgaria mainly recruited new employees. At the start of the situation of pressure the authority assessing the cases had 110 staff members (September 2013, peak crisis), while 50 additional people were recruited by January 2014, therefore reaching 160 by January 2014. Throughout 2014 an additional 110 people were hired and staff members in August 2015 is 303, while an additional 100 people will be hired under AMIF funding.
- Two new reception centres were opened in March 2015. Regarding the number of beds, at the peak of the pressure in September there were 805 beds, which went up to 1,250 by January 2014 via EASO/ERF support this went up and is currently at 5,130, a significant increase. In August capacity was at 76%, which they considered sufficient for the moment, though the situation is being monitored (as the 70% is considered critical according to EASO).
- It also hired a dozen translators for better processing cases, as some cases would take a long time to process given linguistic difficulties to engage with applicants.

#### **Response**

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<sup>140</sup> AIDA report 2014.

<sup>141</sup> AIDA Annual Report 2014.

No measures reported.

At EU level, Bulgaria was granted:

- **Financial emergency assistance** under the **ERF**; Bulgarian authorities requested **financial assistance** from the EU in the form of **emergency measures** under the **ERF**. They were granted financial EUR 5.6 (co-financing of 80%, 1.4 million was contributed by Bulgaria) for the period November 2013 to end of April 2014.
- **EASO Support**: just week after the September 2013 situation presented itself, Bulgaria requested EASO support (on 14<sup>th</sup> October 2013), in order to improve and enhance the Bulgarian asylum and reception system. After an EASO assessment mission in late October 2013, EASO, in consultation with DG Home, DG ECHO and FRONTEX, confirmed the need for support as according to the Executive Director of EASO, Bulgaria faced 'significant pressure on its asylum and reception system'. EASO Support primarily aimed at helping Bulgaria cope with the increase in the influx while at the same time improving and strengthening the Bulgarian asylum and reception system, in the context of the implementation of the instruments of the Common European Asylum System (CEAS).

An **EASO Support Plan** to improve and enhance the Bulgarian asylum and reception system was signed on 17 October 2013, which covered the period from November 2013 until September 2014. In addition to the emergency support provided, it was also agreed that EASO would provide structural capacity-building support, including **operational support, institutional support, and horizontal support**.

A total of **17 support measures** were carried out under the EASO Operating Plan<sup>142</sup>. Amongst those, measure 3.4 for example aimed at supporting decision-making at first instance; measure 3.6 aimed at contributing to enhancing the reception capacity of the State Agency for Refugees (SAR) related to strategic planning and the development and implementation of uniform procedures and quality standards, and; measure 3.8 aimed to support the Bulgarian State Agency for Refugees in handling the backlog of the asylum determination procedure at 1st instance.

In the context of these support measures, EASO supported Bulgaria in the development of a strategy for its **reception strategy**; making better use of and increasing the capacity of existing reception facilities. EASO experts also supported Bulgaria with regard to the **processing** and **decision-making** of applications; it delivered tools for quality assurance, updating guidelines and checklists for the interviews as well as new templates for the decision-making process. Support consisted of, a.o. training for Bulgarian civil servants, capacity building in Country of Origin Information, thematic workshops and technical advice and quality standards. In total, 178 employees of the Bulgarian State Agency for Refugees (SAR) participated in EASO trainings for interviewers, legal advisors, COI experts and interpreters.

On December 5<sup>th</sup>, 2014, EASO and Bulgaria signed a Special Support Plan to continue EASO support to Bulgaria until June 2016, due to the continued high pressure on the Bulgarian asylum and reception system. The plan established 14 new EASO measures, focusing on support with the identification, referral and procedure safeguards for vulnerable groups, reception and social activities, training and coaching in several areas,

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<sup>142</sup> <https://easo.europa.eu/wp-content/uploads/Operating-Plan-Bulgaria-SIGNED.pdf>

and quality assurance and contingency planning. Joint Special Support Teams made up of EASO experts are also to be set up.

- In addition to the assistance provided by EASO, Bulgaria reports that the participation of Bulgarian reception experts in meetings of other existing European networks on reception, including ENARO and EPRA, also contributed to the increased exchange of ideas and practices.

### Impact of the support provided

Following the provision of the 6-month ERF emergency funding support, **Bulgaria** reported in its **Survey** and interview that it was able to significantly **increase** its **reception capacity**, thereby ensuring accommodation for applicants, and further also contributed to **improving the Bulgarian asylum system**, including its **capacity for examining the applications** for international protection and **decision-making process**.

Similarly, Bulgaria's survey further reports that, as a result of **EASO's support**, it increased its **knowhow** on how to deal with **emergency situations**; i.e. the assistance provided resulted in increased preparedness to prevent future backlogs, to deal with existing backlogs as well as to improve its capacity to optimize the use of human and financial resources in order to speed up the procedure. Moreover, the **quality of the Bulgarian asylum procedure** considerably **improved** through the creation of a COI unit within SAR's International Affairs Directorate, improved access to the DublinNet system, training of employees at SAR's territorial units to draft Dublin decisions, the updating of the forms used in conducting interviews and drafting decisions etc. Furthermore, the **asylum determination process** also significantly improved through support provided under measure 3.4, making it **more streamlined and accelerated**. The provision of training contributed to employees' development of new knowledge and skills, which were of added value and formed a basis for the further enhancement of both the reception system, processing and determination procedures.

In April 2014, **UNHCR** recognized the significant efforts by the Bulgarian authorities and their partners to improve living conditions for asylum-seekers and the asylum system in the three previous months<sup>143</sup>. In December 2014, the Executive Director of **EASO** noted that despite the continuing asylum flows pressure on the country, "Bulgaria, with the support of Member States and EASO, had significantly improved its reception and asylum determination system over the past year".

Bulgaria concludes that support from the ERF and EASO was critical in addressing the situation that arose in September 2013. It noted a quick turnaround after EASO support and impact on the situation on the ground. It considers that support from TPD activation might have provided additional support in the medium or long term but indicates that signing an agreement with EASO in a matter of weeks was considered a much quicker and satisfactory approach. In any case, Bulgaria considered it did not meet the criteria for the situation being considered a 'mass influx', as its own criterion was also not surpassed, nor approximated.

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<sup>143</sup> <http://www.unhcr.org/534cfae69.html>

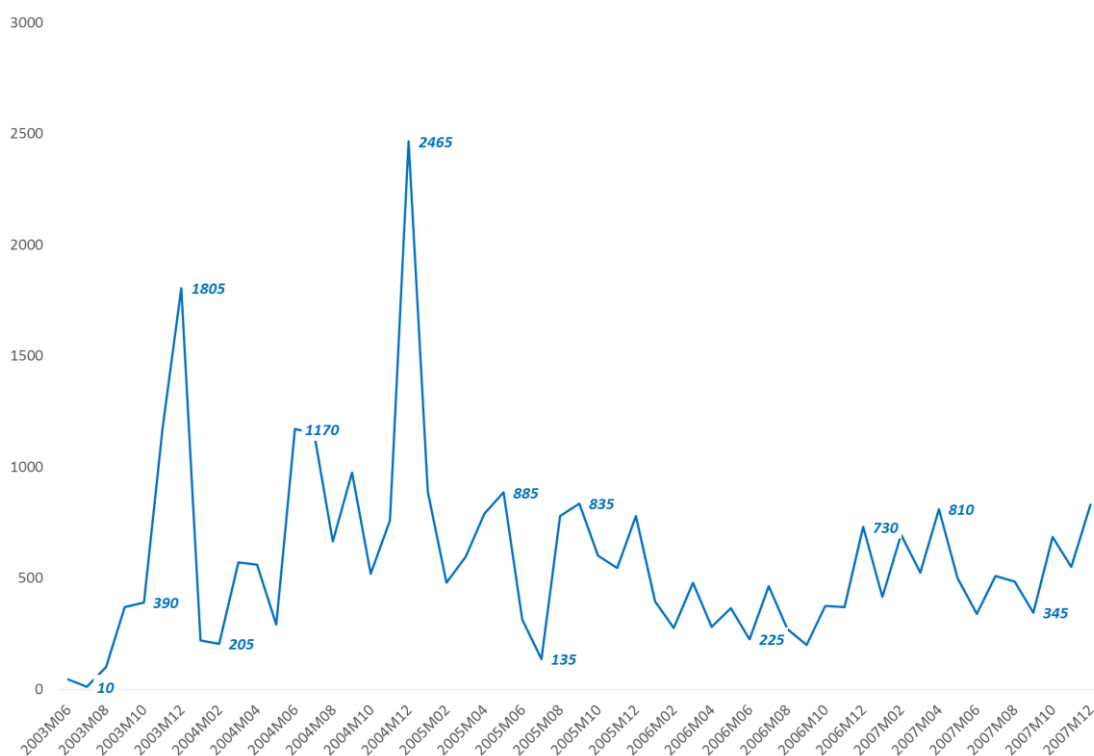
## Cyprus

The Study Team identified a possible case of mass influx/pressure in 2004-2005 and in 2007 in Cyprus. In its Survey, Cyprus confirmed these situations to have constituted a situation of mass influx, although it is recognised that the situations did not correspond to the criteria of a mass influx as laid down in Directive 2001/55/EC.

### Overview of the increase in the number of applications

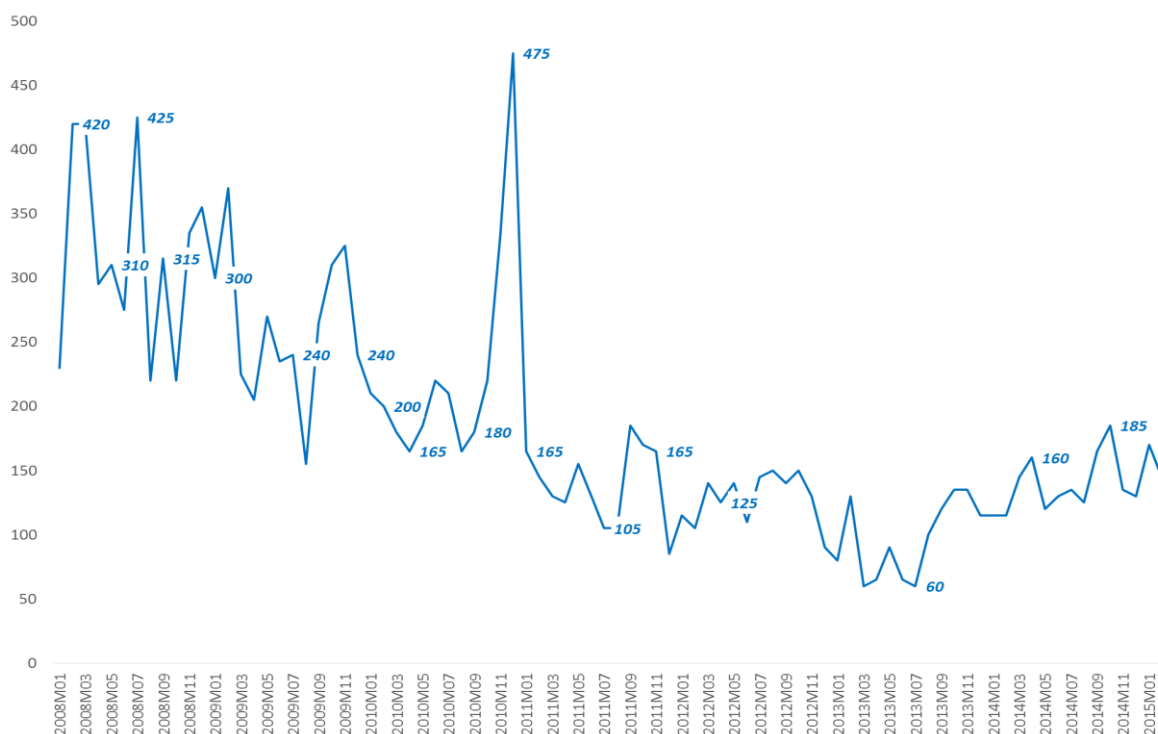
The number of asylum applicants in Cyprus peaked on several instances, most notably in 2003 and 2004, though fluctuations remained very high up to 2008. The number of applicants rose from 390 in October 2003 to 1,805 in December 2003, an increase of 363%. In the same period a year later, figures peaked from 520 in October to 2,465 in December, thus going up 374%. In both years, figures dropped drastically the month after, to 220 in January 2004 and 890 in January 2005.

Figure 10. Overview of total number of asylum applicants in Cyprus from June 2003 to December 2007



In the years from 2008 to 2015 the number of applicants saw a general downward trend. Whereas the average number of applicants exceeded 300 to 400 applicants in most months between 2005 and 2010, the average dropped to under 200 for most months since 2011. However, Cyprus did experience a peak of 475 in December 2012, up from 180 in November, equivalent to a 163% increase. Both the relative and absolute increase, however, are much lower during 2008-2015 than observed in the years before and around Cyprus' entry into the EU.

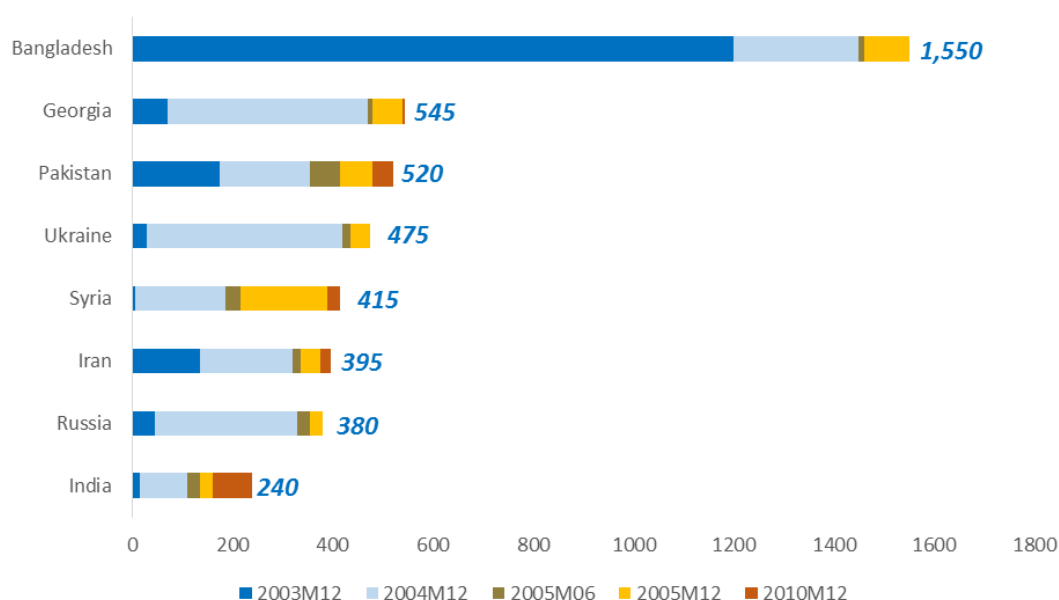
Figure 11. Overview of total number of asylum applicants in Cyprus from January 2008 to January 2015



In the months presenting the biggest peaks (December 2004 and 2005, June 2005 and December 2011), the main nationalities were Bangladeshi (mainly 2003), Georgian (mainly 2004), Pakistani (2003 and 2004), Ukrainian (2004), Syrian (mainly 2005), Iranian (2003 and 2004), Russian (2004) and Indian (2004 and 2010).



Figure 12. Main nationalities of asylum applicants in the months representing the most relevant peaks compared to the previous month



Stakeholders from Cyprus referred to different potential reasons for the influx, including:

- Accession to the EU: In an interview with the Asylum Service in Cyprus, reference was made to the accession of Cyprus to the EU in 2004 as one of the main reasons for the significant increase in the number of applications.
- Rights granted to applicants for international protection: In this interview, it was also explained that applicants for international protection are granted immediate access to the labour market when applying for asylum in Cyprus. The latter was, in the opinion of the staff members of the Asylum Service interviewed, also one of the explanatory factors for the large increase of applications in 2007.

### Consequences of the increase on the national asylum system

Cyprus reported that the influx primarily resulted in (1) a significant backlog of asylum decisions and (2) pressure on the national budget following the provision of subsistence allowance to applicants for international protection due to the lack of reception capacity.

**Lack of reception capacity and pressure on the national budget due to the provision of subsistence allowance:** Up until 2013, Cyprus had one asylum reception centre in Kofinou with a capacity of approximately 70-80 beds. Seeing that in 2004 a total number of 9,872 persons lodged an application for international protection and this number remained significantly high throughout 2005 (7,746) and 2007 (6,789), Cyprus clearly faced a significant lack of sufficient reception capacity in 2004-2005 and in 2007. Following the lack of reception capacity, the government decided to provide applicants who could not be accommodated in the reception centre a subsistence allowance to

meet their reception needs. The total amount of the subsistence allowance could go up to 678 EUR per person per month and this put a significant pressure on the national budget. With the benefit of hindsight, the stakeholders also recognised that this could have also potentially constituted a pull factor for the high number of applications in the first place. Not all applicants were provided with a subsistence allowance however as many applicants were reported to be self-sufficient<sup>144</sup>; Cyprus grants applicants immediate access to the labour market and many applicants had managed to successfully secure employment.

**Backlog of applications:** Stakeholders from the Cypriot Asylum Service reported that the most significant consequence of the increase in applications relates to a high backlog of cases/persons following the influx, whilst the Asylum Service was understaffed. The backlog of cases increased from respectively 4,341 in 2003 to 10,420 in 2005 and then dropped to 4,479 in 2008. The backlog of persons was slightly higher than the backlog of cases which respectively increased from 4,805 in 2003 to 11,247 in 2005 and then dropped to 5,833 in 2008<sup>145</sup>.

### **Management of the situation**

At national level, the government implemented several measures to deal with the influx of applicants. The main measures implemented are described below, distinguishing between measures aimed at prevention, mitigation and response:

#### **Prevention**

No preventive measures were implemented.

#### **Mitigation**

Increase of the national budget to finance the measures as described below (both in 2004-2005 as well as in 2007)

Speeding up of the asylum procedure by hiring additional case-workers: in 2003, the Asylum Service had three case workers. Mid 2014 an additional twelve case-workers were recruited for permanent positions and in 2007, five persons were recruited on short-term contracts to help with the increase of applications. At the end of 2007, there were thus a total of approximately 20 case-workers in total.

Speeding up the asylum procedure by fast-tracking specific applications; two officers were newly recruited and stationed at the Immigration Office where applicants lodge their applications. They were tasked to preliminary screen all applications and to fast-track certain applications that were manifestly unfounded (in 2007)

#### **Respond**

Provision of subsistence allowance to meet the reception needs of applicants who could not be accommodated in the Kofinou reception centre.

Appointment of additional support staff at the Kofinou reception centre e.g. social workers, administrative workers and psychologists in order to improve reception conditions for applicants, following the 2008 crisis.

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<sup>144</sup> Interview with the Cypriot Asylum Service

<sup>145</sup> See the Cyprian Asylum Service Statistics as provided to the Study Team.

### **Impact of the support provided**

The stakeholders of the Cypriot Asylum Service explained that the measures implemented, in particular the hiring of extra case-workers as well as fast-tracking procedures had resulted in more and faster decision-making and thus a reduction in the backlog of cases/persons. As mentioned previously, statistics show that the backlog of cases reduced from 11,247 in 2005 to 5,833 in 2008, whereas the backlog of persons reduced from 10,420 in 2005 to 4,479 in 2008. The interviewees further also expected that the length of the asylum procedure reduced, although statistics on the length of the procedure could not be provided.

The provision of a subsistence allowance to applicants resulted in much pressure on the national budget and due to the high amount could have also constituted a pull factor for more applicants to lodge a claim for international protection, according to the Cypriot Asylum Service.

## France 2007- 2013

The Study Team identified a possible case of mass influx/pressure during 2008-2012 in France. In its survey France reports that it regularly faces "high influxes of applicants for international protection". Since 2007, France has experienced a particular high influx of applicants with particular regions being specifically affected. The great increase in the number of arrivals exceeded the capacity of the asylum system of specific regions. However, France recognises that the pressure could not lead to the possible triggering of the TPD.

### Overview of the increase in the number of applications

The increase of asylum applicants that France indicates in the survey refers to the period starting in early 2007. The number of monthly asylum applicants in France has been rising steadily since 2007, though the figures in the period 2013-2014 are not unlike those already reported in the 2003-2004. A drop in asylum applicants between 2005 and 2007 can be observed in France and indeed throughout the EU.

Figure 13. Total number of asylum applicants in France (in thousands) over the period 2001 to 2015

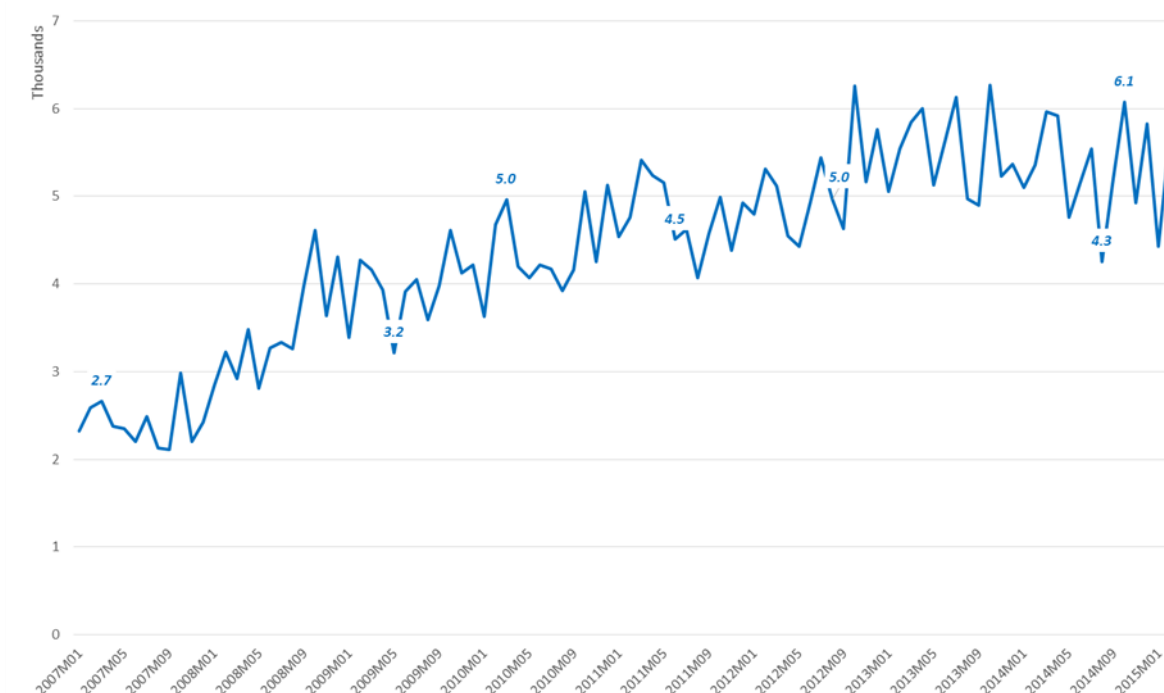


Figure 14 provides an overview of the monthly fluctuations in asylum applicants from 2007 to 2015. The largest annual increase was from 2007 to 2008 when 43% more asylum applications were registered. The largest monthly increase was from September to October 2012 when 35% more applications were registered (rising from 4,630 to 6,260).

The five third countries with the highest number of registering asylum applicants between 2008 and 2014 were Russia, DR Congo, Kosovo, Sri Lanka and Bangladesh, also the only countries with a combined total of over 20,000 applications in this period (between 3,000 and 4,500 people on average per year). Their combined share,

however, hovered between 27% (2008) and 39% (2010). Applicants stem from a great variety of third countries and regions and unlike other Member States, **for France the perceived sustained pressure predominantly relates to the total number of asylum applications (see Figure 14) , rather than those from one or several third countries.**

Figure 14. Total number of asylum applicants in France (in thousands) over the period 2007 to 2015



### Geo-political situation/factors contributing to influx

Over the years, there has been a fluctuation in the number of applications for international protection as well as the main third countries from which the applicants originate. France also reported that certain sudden increases were linked to the removal of some third countries from the list of safe countries of origins: this was for example the case for Armenians in 2011, Kosovars and Bangladeshis in 2013. In some cases, at micro-scale level, relatively rapid increases of applications concerned some groups although total numbers remained unchanged (e.g. Chechens in 2006-2008, Afghans in 2009).

### Consequences of the increase on the national asylum system

Although France has experienced great fluctuation in the number of applications on a regular basis, the influx particularly increased starting from 2007 with high

concentration in particular geographical areas<sup>146</sup>. In some regions (e.g. Franche-Comté and Lorraine in 2013), the number of arrivals doubled in one year creating **serious constraints to local reception capacities, affecting the speed of registration and the duration of asylum procedures**. In particular, the fluctuation of the number of applications and the rapid change of the countries of origin – as described above – resulted in particular stress on local reception centres and on the functioning of procedures for granting protection.

The geographical areas of France most affected by the influx of asylum seekers have changed throughout years but larger cities (e.g. Paris, Lyon, Marseille, Strasbourg, Lille and Dunkerque) have constantly been affected. Occasionally, specific regions/areas, such as the the North Coast (Calais) were also affected. In September 2014, the UNHCR expressed serious concerns about the deteriorating conditions of asylum seekers present in Calais. The total number of migrants in the city was estimated at 1,000 and most of them were without access to reception and appropriate assistance. The UNHCR called French authorities for urgent actions to address the situation, taking into particular account of the risks of abuse for vulnerable people.<sup>147</sup>

The local reception capacities of the regions Lorraine and Rhone-Alpes were also particularly affected during winter season, when emergency accommodation was insufficient. In 2013, out of 59,327 asylum seekers that were entitled to accommodation only 19,008 had been able to access housing in a reception centre, i.e. only 32%.<sup>148</sup> At the end of 2013, a total of 15,000 asylum seekers were on a priority waiting list to receive accommodation in reception centres; in the meantime these persons were hosted in emergency facilities or not accommodated at all. Moreover, the backlog in 2014 was of 17,000 cases of first instance procedures and 20,031 cases at appeal stage.<sup>149</sup>

The number of asylum seekers granted protection varied significantly until 2011 and increased since 2012, from 9,976 to reach 14,489 total positive decisions in 2014. The recognition rate has also slightly increased from 24.5% in 2013<sup>150</sup> to 28% in 2014<sup>151</sup>. According to data provided in the survey, around 75% of decisions granted refugee status and almost 25% subsidiary protection, this latter being a number slowly decreasing in the last years.

### **Management of the situation**

To deal with the high influxes, France implemented several measures both at national as well as EU level.

At national level, the following measures were implemented, distinguishing between measures aiming for prevention, mitigation and response:

#### **Prevention**

No measures reported implemented

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<sup>146</sup> Which regions has to be checked with a follow up interview.

<sup>147</sup> <http://www.unhcr.org/542563199.html>

<sup>148</sup> Aida National Report France 2014, p. 54.

<sup>149</sup> Aida National Report France 2015, p. 19

<sup>150</sup> Aida National Report France 2014, p. 18.

<sup>151</sup> Aida National Report France 2015, p. 19.

## **Mitigation**

- Speeding up of the asylum procedure by hiring more case-workers: According to the survey, staff was increased and working methods were rationalised, in order to face the increasing administrative burden of applications to proceed.
- Speeding-up of the asylum procedure: Several mobile advisory missions were organised in 2013 and renewed in 2014: these consisted of operations aiming to reduce the length of procedures in Grenoble, Strasbourg and Lyon as those regions were under particular pressure<sup>152</sup>.

## **Respond**

- Distribution across the country: The national authorities plan to tackle the high concentration of asylum applications in specific areas by redistributing the applicants in areas where they can be better accommodated (this has however not been implemented yet, the law was adopted on 29 July 2015).
- In Calais: migrants have been informed on their right to apply for asylum and to benefit from accommodation. On 31 July 2015, 1228 asylum seekers have already been received at the prefecture in Calais since the beginning of the year: 839 of them have had their asylum application examined in normal procedure; 128 have had their asylum application examined in accelerated procedure; 297 are under the Dublin procedure. 1016 asylum seekers have been accommodated in regular and emergency accommodation throughout the French territory since September 2014, including through an increase of around 600 available accommodation places since November 2014.

### At EU level:

- ERF funding: France benefitted of a total of EUR 62.5 million of **ERF funding under priority 1** between 2008 and 2013<sup>153</sup>. EU contributions under priority 1 received 90% of the funding and almost doubled between 2008 and 2012, from EUR 6.9 million to EUR 12.7 million. Most of the actions under this priority tailored reception and accompaniment of asylum seekers (66.7%) aiming at decentralising reception and accommodation services by building capacity in regional centres, thus relieving the most affected areas.

In 2013, France was granted 1.3 million EUR of **ERF emergency funding** for the implementation of a five-month project aiming to support reception facilities in Rhone-Alpes. The funding allowed France to create 440 places in Rhône-Alpes between January 1st and June 30 2014 and between 480 and 550 places in Lorraine between January 1st 2014 and May 31 2014.

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<sup>152</sup> EMN Annual Policy Report on Asylum and Migration – France National Report 2014

<sup>153</sup> France country fiche, ICF study Baseline for the next Multiannual Financial Framework in the Home Affairs area. Priority 1 includes "Implementation of the principles and measures set out in the Community acquis in the field of asylum, including those related to integration objectives".

### Impact of the support provided

Starting in January 2010 regional reception facilities were strengthened in the whole French territory: 35 new reception platforms have been created for 34 entry points (two platforms are located in Paris)<sup>154</sup>. Despite the national efforts to create 4,000 additional places by 2014, the available facilities remain insufficient. Also, the hiring of case workers helped to mitigate the impact of the increase in asylum claims, but was not sufficient.

The 2013 ERF **emergency funding** allowed to create a total of 1,000 emergency accommodation places, of which 550 in Lorraine and 440 in the Rhone-Alpes region. As reported in the survey, standards of protection assistance provided improved, in particular with regard to legal and administrative assistance and medical and social aid.

National inspection bodies highlighted some progress towards a better geographical distribution of unaccompanied asylum-seeking minors, with more solidarity among provinces (*départements*)<sup>155</sup>.

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<sup>154</sup> France country fiche, ICF study, quoted above..

<sup>155</sup> Assessment of the scheme for unaccompanied foreign children established under the protocol and the circular of 31 May 2013, Evaluation du dispositif relatif aux mineurs isolés étrangers mis en place par le protocole et la circulaire du 31 mai 2013, July 2014.



## Germany 2013-2014

The Study Team has identified a possible case of mass influx for Germany in 2013. According to the Federal Office for Migration and Refugees, Germany has been confronted with two cases of mass influx of displaced persons in 2013 and 2014.

### Overview of the increase in the number of applications

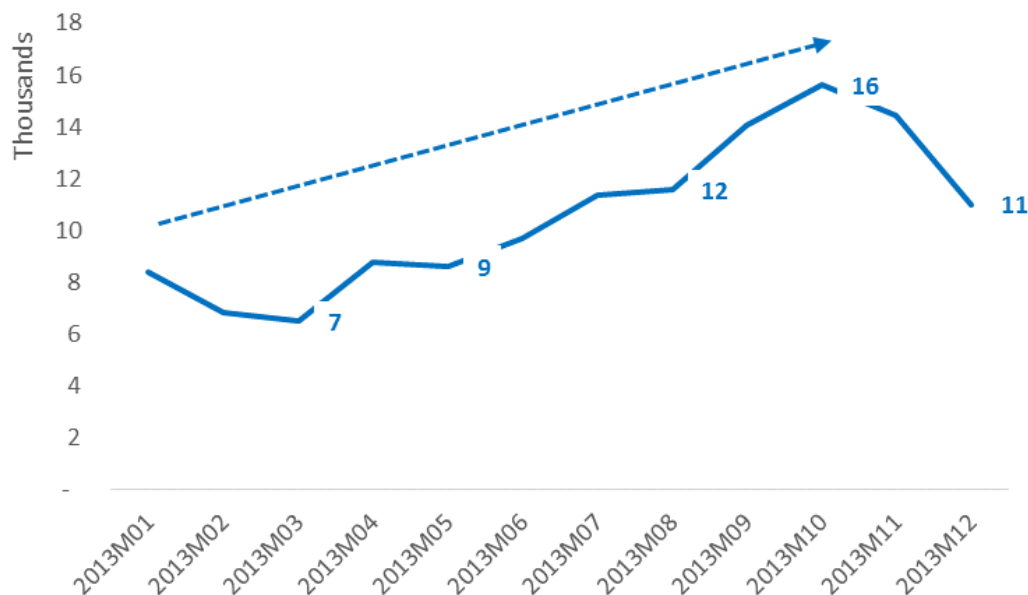
In 2013, Germany experienced a substantial increase in the number of applications lodged for international protection. Overall, the overall number of **127,033**<sup>156</sup> represented 29% of all asylum seekers applications in the EU, with a 142.3% increase over a 6 months period (March-October 2013). This major jump can be explained by the fact that Germany was the first or second destination country for asylum applicants from the Western Balkans, Syria and the Russian Federation.

The number of applications in 2014 peaked to **202,834** which amounted to a 95.7% increase over the period March-November 2014. The main nationalities were Syrian and Eritrean.

In total, Germany registered **329,867** applications for the period 2013-2014.

Figures 15 and 16 show the monthly change in the total asylum applications lodged in Germany in the years 2013, 2014 and the first three months of 2015. The average in 2013 was 10,500, as opposed to 55,000 in 2014-2015 (to date), a more than fivefold increase.

Figure 15. Monthly change in total asylum applications for 2013 (in thousands)



<sup>156</sup> 126,705 applicants according to EASO 2013 Annual Report, available at: <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

Figure 16. Monthly change in total asylum applications for 2014 and the first three months of March (in thousands)

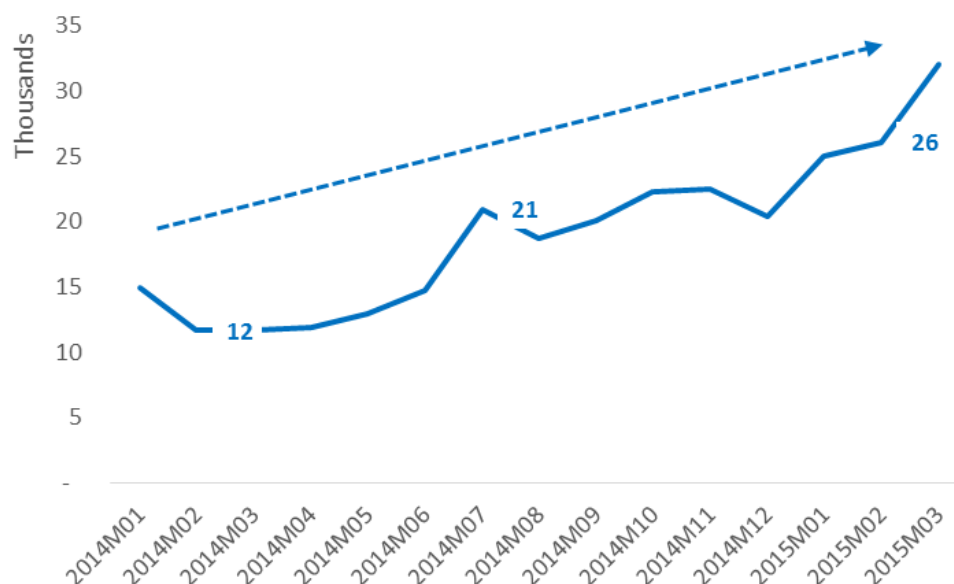


Figure 17 highlights the main citizen groups applying for asylum to Germany in 2013, showing a significant uptake towards the end of 2013. The share of this group of 7 countries out of total asylum applications in Germany was around 55%.

Figure 17. Total number of asylum applications in 2013 for main citizen groups (in thousands)

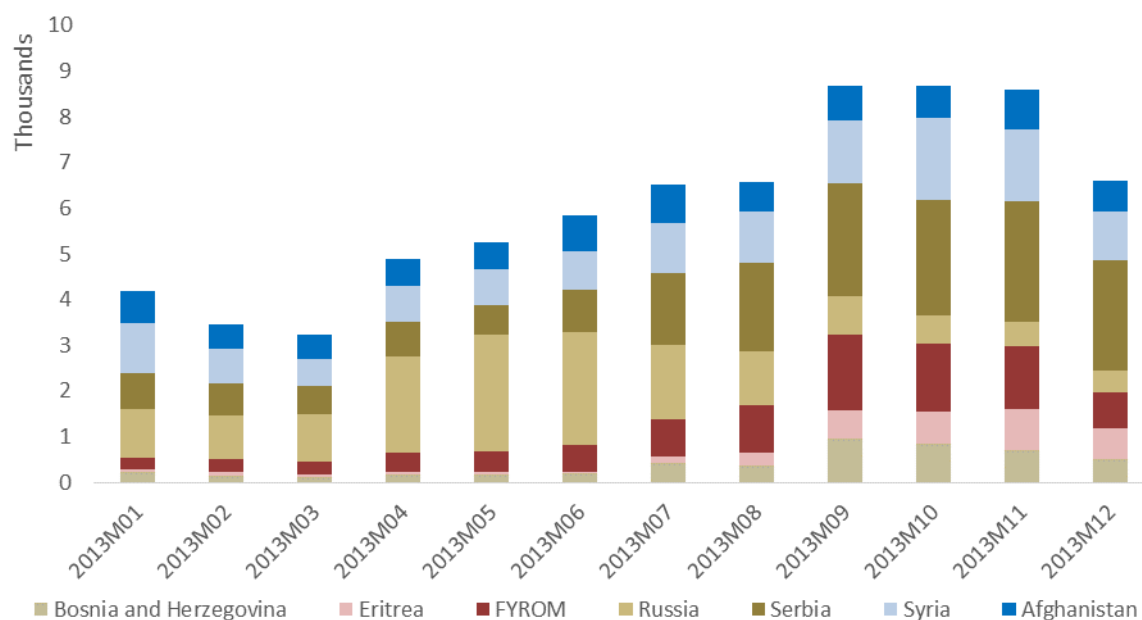
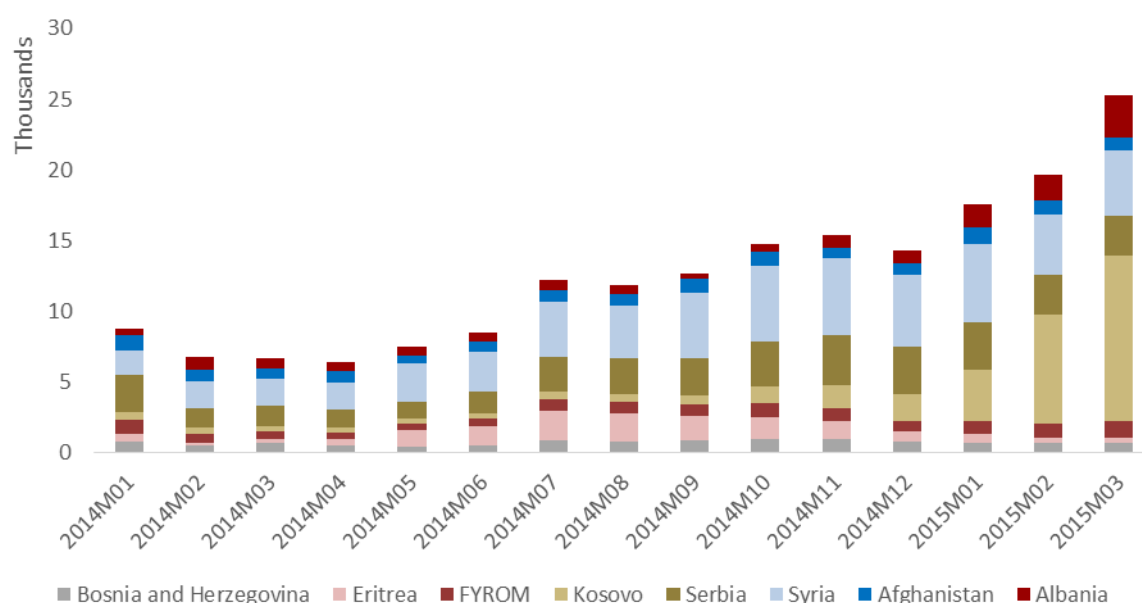


Figure 18 highlights the top third countries applying for asylum in Germany in 2014, showing a significant uptake towards the end of 2014 compared to the first quarter of 2014 and another rapid acceleration in early 2015. The number of applicants from Kosovo grew 500% from December 2014 to March 2015. When the number of applicants of Kosovars dropped in Hungary in March 2015 (from 13,600 in February to 450), they rose by over 50% in Germany. The share of this group of 8 countries out of the total asylum applications in Germany was around 60%, but over 70% in 2015.

Figure 18. Total number of asylum applications in 2014 and 2015 for main third countries (in thousands)



## Geo-political situation

Since the start of the conflict in Syria in 2011, 4 million Syrians fled and a further 7.6 have been internally displaced bringing the total number forced to flee their homes to more than 11 million - half the country's pre-crisis population<sup>157</sup>. Syria was the main country of origin of asylum seekers in the EU28 both in 2013<sup>158</sup> and 2014<sup>159</sup> and Germany was one of the main receiving countries for Syrian asylum seekers.

## Consequences of the increase on the national asylum system

Germany reported that the significant increase in the number of applications in 2014 resulted in a pressure both on **the national reception system as well as the processing of applications**. In the Länder, the number of facilities was reported to be insufficient (tents had to be put up for asylum seekers) as well as the number of staff in the aliens' authorities (with a ratio of approx. 1 case worker per 100 applications).<sup>160</sup> A sharp increase in the number of pending cases was also registered: +67% from 2012

<sup>157</sup> <http://www.bbc.com/news/world-middle-east-26116868>

<sup>158</sup> EASO Annual Report on the situation of asylum in the European Union.

<sup>159</sup> EMN 2014 Annual Report on Immigration and Asylum.

<sup>160</sup> 200 case workers for a total number of 202,834 applications

to 2013<sup>161</sup> and from 95.743 in 2013 to 169.166 in 2014. The higher number of pending cases at the courts (from 39,439 in 2013 to 52,585 in 2014) was considered an **adverse effect** on the national asylum system. A total of 33,310 applicants were granted protection under the Geneva Convention rules, while 5,174 subsidiary protection and 2,079 other forms of protection.

The AIDA 2013 Annual report confirmed that Germany experienced difficulties in responding to the increase of asylum seekers. The report documents **overcrowding in some centres** and the Federal States and municipalities.<sup>162</sup> Same findings were reported by the EASO 2013 Annual Report.<sup>163</sup> Data for 2013 show only that 10,915 applicants (13.5%) were granted protection under the Geneva Convention rules, while 7.005 (8.7%) subsidiary protection and 2.208 (2.7%) other forms of protection.

### Management of the situation

Germany reported in its survey that following the pressure exerted, various measures were activated to cope with the situation at federal/Länder level as well as at EU level.

At national level, the following measures were implemented, distinguishing between measures aiming to prevent, mitigate and respond to an influx:

#### Prevention

No measures identified in the survey.

#### Mitigation

- Speeding-up the asylum procedure by fast-tracking: Changes were introduced vis-a-vis the standard schedule for interviews (by carrying out identification procedures (personal data, fingerprints) and asking applicants, in the context of the identification procedure, if there were reasons not to be returned to the country of origin) in order to handle applications as quickly as possible.
- According to EASO,<sup>164</sup> Germany created on 1 October 2013 a **special decision-making group for Syria** to process applications from Syria using a prioritised procedure. Syrian applicants whose personal hearings were not yet scheduled thus had the opportunity to state the facts of their claim in written form. Also, a temporary task force for operative management ('**PGOS**') was implemented on 15 May 2013 to develop measures to more efficiently handle the (increased) flow of **Russian citizens**: decisions on asylum applications from this country of origin were made in every branch office of the Federal Office instead of being assigned to specific ones only.<sup>165</sup>
- Information campaigns were conducted in the Western Balkans with the aim of reducing the number of TCNs originating from the Western Balkans from applying for asylum in Germany

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<sup>161</sup> <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

<sup>162</sup> "Mind the gap" - Asylum Information Database (AIDA) 2013, Country Report Germany – Conditions in reception facilities, available at:

[http://www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_annual\\_report\\_2013-2014\\_0.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_annual_report_2013-2014_0.pdf)

<sup>163</sup> <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

<sup>164</sup> <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

<sup>165</sup> <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

## Response

- In February 2014, the Federal Ministry of the Interior prepared the "Law on the designation of additional states as safe countries of origin and improvements in access to the labour market for asylum seekers and tolerated foreigners", adding Serbia, Bosnia and Herzegovina and Macedonia to the list of safe countries of origin, pursuant to section 29a of the Asylum Procedure Act. The applicable law came into force on 06/11/2014.<sup>166</sup>
- Creation of new reception facilities: According to the EMN Reception Facilities Study, the Lander must create additional follow-up accommodation capacity if places in existing reception centres are not sufficient to accommodate the number of applicants that the region must receive on the basis of the quota system. Moreover, according to the Survey, Germany had to resort more frequently to sub-contracting the accommodation of asylum seekers to **private companies or welfare organisations**.<sup>167</sup>
- Humanitarian admission: In March 2013, DE notified UNHCR that it would implement a 'humanitarian admissions pilot' whereby 5,000 Syrian refugees, primarily from Lebanon, would be temporarily admitted to Germany with a residence permit of 2 years, with the possibility of renewal depending upon the situation in Syria.<sup>168</sup> Selection criteria include:
  - Special humanitarian needs;
  - Existing family or other ties with Germany;
  - The ability to make a particular contribution to rebuilding Syria once the conflict is over.

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### Overview of the DE humanitarian admissions programme<sup>169</sup>

- According to § 23, Paragraph 2, AufenthG, the Federal Ministry of the Interior (BMI) can, "for the safeguarding of special political interests of the Federal Republic of Germany", issue an instruction ordering the Federal Office for Migration and Refugees (BAMF) to issue an undertaking to admit certain groups of third-country nationals. This regulation applies only in respect of the admission groups, and not in respect of individual persons, but only in respect of groups. Furthermore, the affected persons must still be located outside Germany.
- § 23, Paragraph 2, AufenthG was created with the Immigration Act, replacing the so-called "Quota Refugees' Law" (Kontingentflüchtlingsgesetz) of 1980. During the 1980s,

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<sup>166</sup> [http://www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_annual\\_report\\_2013-2014\\_0.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_annual_report_2013-2014_0.pdf) and 2014 EMN Annual Policy Report (Germany)

<sup>167</sup> [http://www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_annual\\_report\\_2013-2014\\_0.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_annual_report_2013-2014_0.pdf)

<sup>168</sup> Christine Marie Fandrich, A Comparative Study on the Asylum Landscapes within the EU for Iraqis after the 2003 Iraq War and Syrians after the 2011 Syrian Civil War (EUI, 2013, available at: [http://cadmus.eui.eu/bitstream/handle/1814/29059/RSCAS\\_2013\\_89.pdf?sequence=3](http://cadmus.eui.eu/bitstream/handle/1814/29059/RSCAS_2013_89.pdf?sequence=3))

<sup>169</sup> German contribution to the EMN Study on Non-EU Harmonised Protection Statuses, title "The Granting of Non-EU Harmonised Protection Statuses in Germany"

this law was the basis on which “Boat People” from Vietnam and refugee groups from Chile, Argentina, Cuba and Iraq were admitted.

- Objective:
- The purpose of § 23, Paragraph 2, AufenthG is “to enable groups of TCNs who would otherwise have no possibility of legally coming to Germany and receiving a right of residence to enter and be allowed to stay for purely political considerations” (DE contribution to EMN Study – see above, pg. 27).
- There are four stages to the procedure to be followed in respect of § 23, Paragraph 2, AufenthG:
- BMI establishes an agreement with the supreme Länder authorities in respect of the “special political interests” of the Federal Republic;
- Following this, the BMI issues an instruction to the BAMF concerning the admission of TCNs from particular countries (e.g. Syria), or groups of foreigners determined in some other fashion.
- On the basis of this, the BAMF then issues, in individual instances, an undertaking to admit the foreigner who is benefiting from this provision.
- The diplomatic missions and the local foreigners’ authorities within Germany then issue a residence permit on the basis of this.

At EU level, the following measures were provided:

- Provision of ERF funding: though the survey reports on no **emergency funding** under the ERF or support from EASO being requested, EASO reports that emergency funding under ERF was provided to support eight Member States,<sup>170</sup> including Germany.<sup>171</sup>

### **Impact of the support provided**

With regard to the measures implemented to speed up the processing time, Germany reported that the fast-tracking procedures and the special decision-making group enabled them to speed up the procedure following which processing time was reduced. However, it has proven difficult to return rejected asylum seekers which is why the overall stay of TCNs in Germany has not minimised to the extent they had hoped for. Moreover, Germany is continuously increasing its reception capacity making sure that applicants are provided accommodation.

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<sup>170</sup> COM (2014) 288. EUR 36.34 million were granted to DE, FR, HU, MT, NL, CY, EL, BG  
<http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-288-EN-F1-1.Pdf>

<sup>171</sup> Ibid. According to DG Home, Germany was granted EUR 14.52 million under ERF 2013:  
[http://ec.europa.eu/dgs/home-affairs/e-library/docs/infographics/asylum/infographic\\_asylum\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/infographics/asylum/infographic_asylum_en.pdf)

## Greece 2006-2008

The Study Team identified a case of possible mass influx/pressure in Greece during the period 2006-2008.

During the interview, Greece confirmed that, due to its geographic situation, its asylum system is under permanent pressure due to primarily the influxes of irregular migrants at the European external borders. In this regard, Greece referred to the current situation in 2015, as “the biggest pressure ever experienced” which has resulted in a humanitarian crisis on the ground.

### Overview of the increase in the number of applications

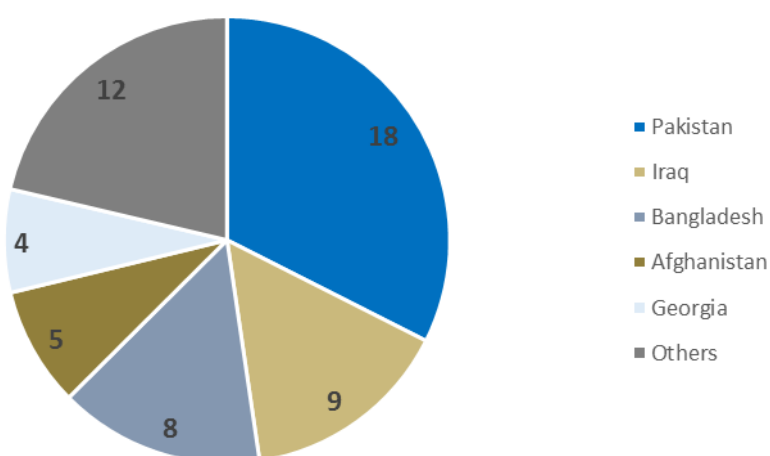
Figure 19 provides an overview of the development of the number of asylum applicants to Greece between 2001 and 2014. It shows an uptake of applicants from 2006, remaining high for the period 2006-2008.

Whereas during the overall period 2001-2014 the total number of asylum applications has hovered between 5,000 and 10,000, the number reached 12,000 in 2006, 16,000 in 2009, and 20,000 in 2008 and peaked especially in 2007 with a total number of 25,000 applications. The biggest increase was noted in the second half of 2006, rising from 400 in August to 1,000 in September, 2,350 in October and 2,850 in November.

In the period 2008-2010, Greece was also confronted with “massive migratory pressure on its borders”<sup>172</sup>. In 2008 and 2009 the number of irregular border crossings was extremely high (88,226 cases in 2008 and 79,435 in 2009) affecting both land and sea borders. The number further increased in 2010 to a total of 89,000 cases.

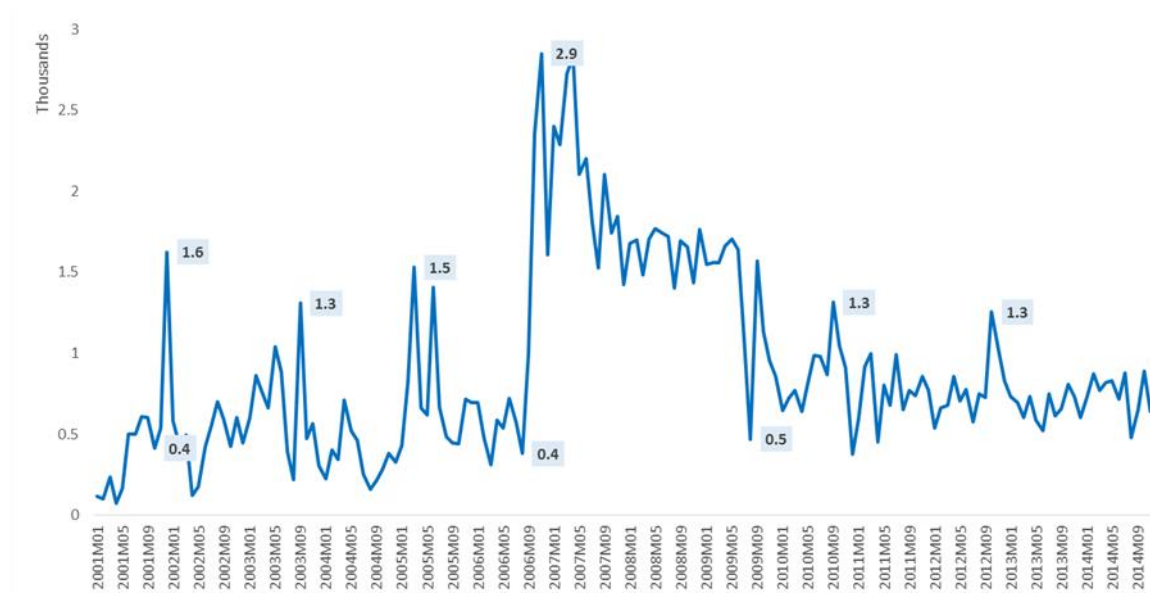
Over the period 2006-2008 the top five nationalities represented 79% of the total, with Pakistan representing one third, and Iraq and Bangladesh 15% each.

Figure 19. Overview of share of main nationalities for asylum applicants between 2006 and 2008



<sup>172</sup> SWD (2014) 316 Final, Commission Staff Working Document on the Assessment of the implementation of the Greek Action Plan on asylum and migration management

Figure 20. Development of asylum applicants to Greece between 2001 and 2014.



### Consequences of the increase on the national asylum system

The pressure revealed that the Greek border management system and its national reception and asylum system were inadequate and were not prepared to cope with the increased needs. For example, according to the 2010 EASO Greek Action Plan: “there were **inadequate asylum infrastructures** in Greece, compounded by **provisional procedures** and an **inadequate legal framework**”. Applicants were not screened at the border, whilst the police carried responsibility for registering applicants and deciding on their claims<sup>173</sup>.

When confronted with the increase in applications starting in 2006, it became clear, very quickly, that Greece had **insufficient reception capacity**, insufficient staff and inadequate procedures, which not only led to **overcrowding** but overall **very poor reception conditions** in accommodation centres (threatening the fundamental rights of applicants) as well as **lengthy procedures** and a **significant backlog in asylum cases** (estimated in 2011 at 46,000 cases). Numerous reports from international organisations, NGOs, lawyers and individuals confirm the aforementioned<sup>174</sup>.

A number of judgements of the European Court of Human Rights<sup>175</sup> had also condemned Greece for **failing to respect the fundamental rights of migrants, including applicants for international protection**. These judgements underlined the existence

<sup>173</sup> EASO Operating Plan 2011.

<sup>174</sup> The reports include, inter alia, an opinion of the Greek Ombudsman, reports by Human Rights Watch, a follow up report by the Pro Asyl group, a report by Thomas Hammarberg, Council of Europe's Commissioner for Human Rights, a report by the Austrian Red Cross and Caritas Austria and submissions by the Greek Group of Lawyers for the Rights of Refugees and Migrants. See SWD (2014) 316 Final.

<sup>175</sup> M.S.S v. Belgium and Greece case



of **inhumane detention conditions**, cases of **applicants becoming homeless and destitute**, as well as an **impeded access to an effective remedy against detention decisions**<sup>176</sup>.

The Commission subsequently also initiated **infringement proceedings** against Greece in 2009 and 2010 concerning the implementation of the EU asylum *acquis* in the area of access to and adequateness of the asylum procedure as well as reception conditions, including in respect of vulnerable applicants for international protection, such as unaccompanied minors<sup>177</sup>.

### Management of the situation

Various measures were implemented to cope with the situation, both at national as well as EU level.

At national level, few measures were implemented, distinguishing between those aimed at prevention, mitigation and response:

#### Prevention

No measures reported.

#### Mitigation

- Mechanisms to speed up the asylum procedure: Greece recruited extra case-workers to speed-up the processing and decision-making on applications for international protection.

#### Response

- Greece committed to reform its asylum and migration policies on the basis of a national (Greek) Action Plan presented in August 2010 and revised in January 2013. The Action Plan was developed and implemented with the help of ERF emergency funding as well as EASO operational support (see below).

At EU level, Greece was granted:

- **Financial emergency assistance** under the **ERF**; the Greek authorities requested **financial assistance** from the EU in the form of **emergency measures** under the **ERF** following the permanent pressure exerted on their asylum system. Greece has, every year during the period 2008-2013, been granted additional funding under the ERF which amounted to a total sum of EUR 22 M. The main aim was (with help of EASO, see below) to create appropriate asylum structures able to deal with the high number of applications. However, EU funding proved insufficient to address all the needs identified in the asylum procedure and reception area. In this context, the Commission significantly increased these amounts from EUR 22 M to EUR 56 M with the allocation of additional emergency funding, under e.g. the External Borders Fund (EBF) and the Return Fund (RF), which disposed of significantly increased resources. In this context, in 2013, EUR 3.5 M was also granted to UNHCR under the ERF

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<sup>176</sup> SWD (2014) 316 Final, Commission Staff Working Document on the Assessment of the implementation of the Greek Action Plan on asylum and migration management

<sup>177</sup> SWD (2014) 316 Final, Commission Staff Working Document on the Assessment of the implementation of the Greek Action Plan on asylum and migration management

Community Actions in support of the Greek efforts for the clearance of the backlog.

- **EASO operational support:** EASO has provided **emergency support** to **Greece** following a request made by the Greek Government in early 2011. The EASO Operating Plan aimed to support the establishment of the new Asylum Service (with civil servants from the Ministry independent from the police), First Reception Service, Appeals Authority, reception of vulnerable persons, reduction of the case backlog and capacity building absorption. The assistance provided was implemented in two phases: Phase I covered the period April 2011- March 2013 and Phase II extended the support until December 2014.
- Establishment of an internal **Task Force on Greece within Directorate-General Home Affairs (DG HOME)** which aimed to assist Greece in the establishment of a protective and well-functioning asylum, migration, border management and return system with a view to ensuring a smooth functioning of the Schengen area and the Common European Asylum System, including the Dublin system.
- **Monitoring Missions** conducted in Greece by the Commission: a total of 20 monitoring missions have been conducted since 2010 at technical and political levels.
- Organisation of **regular ad hoc meetings** of the so-called "**Friends of Greece Group**". This Group is a forum for the exchange of information on the state of implementation of the Action Plan, *inter alia* allowing interested Member States to propose practical cooperation measures.

### **Impact of the support provided**

The Commission's Staff Working Document on "the assessment of the implementation of the Greek Action Plan on asylum and migration management"<sup>178</sup> extensively describes the impact of the measures implemented. A brief summary is provided below:

With regard to **first reception**, the Commission's Staff Working Document reports that the following was achieved:

- Establishment and operation of a First Reception Service;
- Establishment and operation of the First Reception Centre in the area of Fylakiov Evros (240 places). Establishment of FRC in Lesbos (220 places but not yet operational);
- Establishment and operation of two First reception Mobile Units
- Establishment of three screening centres
- Training of personnel by FRONTEX and EASO

In these centres the following already takes place: identification, registration, medical screening, socio-psychological support, provision of information, referral of vulnerable persons to open accommodation (if available), provision of interpretation etc. Despite

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<sup>178</sup> SWD (2014) 316 Final, Commission Staff Working Document on the Assessment of the implementation of the Greek Action Plan on asylum and migration management

such progress, the report mentions that **first reception capacity is overall still quite limited** and continues to be in need of further financial and human resources.

With regard to **reception**, the Commission's Staff Working document reports that the following was achieved:

- Limited increase in the number of open reception places for applicants for international protection and vulnerable persons. The majority of places (25,536) is funded by the ERF and European Economic Area grants (272), whilst only few (352) are funded by the national budget;
- Improvement of the referral system to open accommodation for applicants and vulnerable persons by the appointment of the National Centre for Social Solidarity as the Referral Authority and the cooperation between the competent authorities (Police, First Reception Service, Asylum Service);
- Identification of seven new reception facilities (three in Attica and one each in Serres, Dikaia, Sparti and Sidirokastro).

The **improvements** mentioned above **remain limited** and much more needs to be undertaken by the Greek authorities in view of ensuring that all applicants receive reception conditions in line with the requirements of the EU asylum *acquis*. In particular, open reception places need to increase and adapted to vulnerable applicants.

Finally, with regard to the **processing of asylum claims**, the Commission's Staff Working Document reports that the following has been achieved:

- Establishment and operation of the Asylum Service replacing the Hellenic Police for the registration and examination at first instance of applications lodged after 7 June 2013;
- Establishment and operation of five Regional Asylum Offices;
- Establishment and operation of four Asylum Mobile Units;
- Provision of information on the asylum procedure and the rights of the applicants, interpretation and counselling services to applicants for international protection, including in view of facilitating access to the asylum procedure;
- The registration rate of applications of international protection has increased;
- Training of personnel and appeal committees by EASO and UNHCR;
- Establishment of national database on country of origin information (COI);
- Development of relevant IT tools;
- Increase in the recognition rate at first instance;
- Establishment of a screening procedure to identify vulnerable applicants;
- Establishment and operation of an appeals authority;
- Establishment of 20 Appeals Committees;
- Establishment of a Task Force on unaccompanied minors consisting of representatives of co-responsible authorities (e.g. Ministry of Justice, Hellenic Police, First Reception Service, Asylum Service, Ministry of Labour).

Despite the improvements mentioned above, **several actions still remain to be implemented** according to the Greek Action Plan to ensure an effective and protective asylum procedure, in line with the EU asylum acquis. These include inter alia clearance of the backlog of pending cases, guaranteeing that all required personnel and infrastructures are in place, establishment of remaining regional asylum offices, provision of access to free legal assistance, ensuring cooperation and coordination between different stakeholders involved etc.

## Hungary 2013- 2015

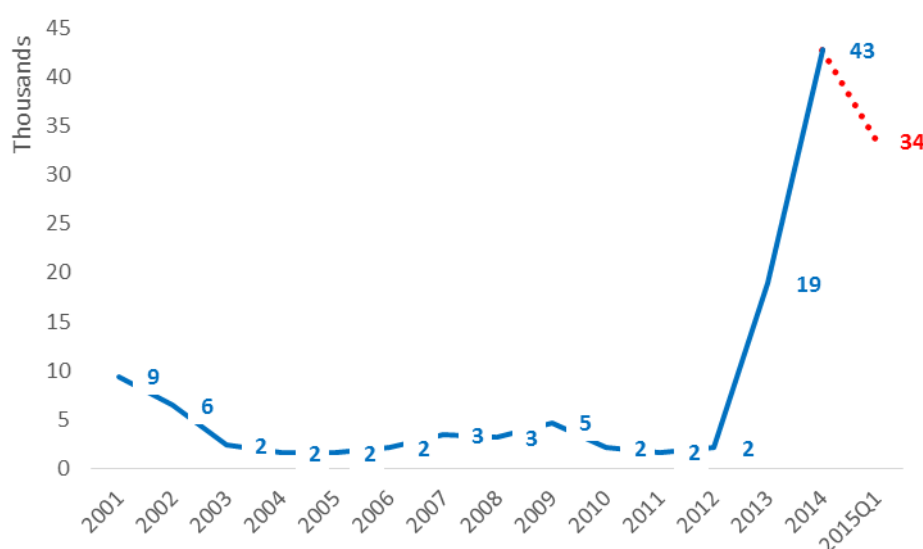
The Study Team identified a possible case of mass influx in the years 2013-2014. Hungary confirmed in its survey that this constituted a situation of high pressure and indicated that the pressure has shot up significantly in 2015. In the May survey Hungary indicated that the pressure did not qualify as a mass influx under the criteria laid down in Directive 2001/55/EC.

### Overview of the increase in the number of applications

Figure 21 shows the development of the number of asylum applications between 2001 and 2014. The number was relatively low before Hungary joined the EU in 2004 and remained so until 2013. In 2013, however, it rose starkly and then further accelerated in 2014. The total number of applications lodged for international protection in Hungary increased from 18,900 in 2013 to 42,760 in 2014 (+126%)<sup>179</sup>.

Moreover, the numbers have skyrocketed in 2015, reaching over 150,000 by August 2015.

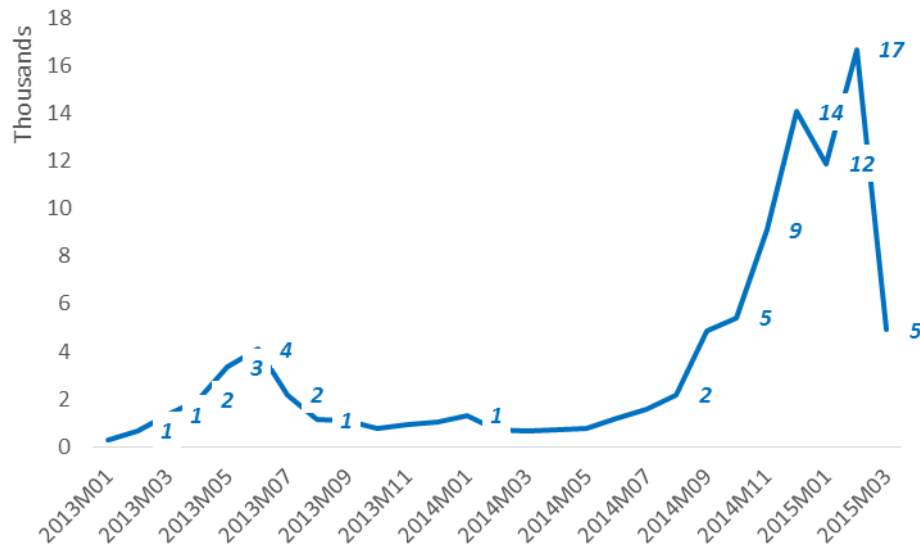
Figure 21. Total number of asylum applications between 2001 and 2014 (in thousands)



For the period 2001-2014, the highest absolute peak occurred between August and September 2014, when the applications for international protection increased from by 125%, from 2,170 to 4,875 in one month. Seen over a two-month period the number of applications grew by 210% between July and September 2014 (1,585 to 4,875) and 160% from October to December (5,405 to 14,075).

<sup>179</sup> Annual Eurostat figures broken down by third country.

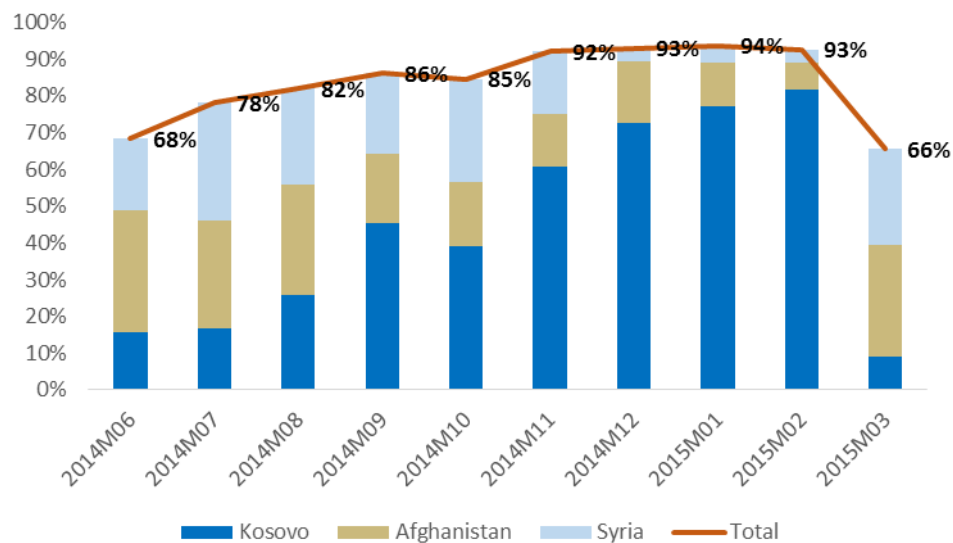
Figure 22. Overview of peaks in the number of asylum applications (2013-2015)



The main three third countries of applicants in the period from January 2014 to March 2015 were Kosovo, Afghanistan and Syria.

Figure 23 highlights that from June to the first quarter of 2015 three third countries were responsible for between two thirds and 94% of all applications. Applications from Kosovo accounted for over 90% of the total between November 2011 and February 2015.

Figure 23. Main third countries and the total share of their applications out of all applications for asylum



### **Geo-political situation/factors contributing to the increase**

The influx into Hungary can be explained by the fact that if people arrive through the Western Balkans, the country is the Schengen Member State that connects them to a wider EU hinterland, including Germany and Sweden. With the

### **Consequences of the increase on the national asylum system**

The survey indicates that the increase of applications resulted in pressure on Hungary's asylum system and affected its **reception system as well as the resources to process applications**. Until 2013 Hungary had limited reception capacity available, hovering around a maximum of 3,000 permanent places. Capacity has increased since then but was still only around double that figure (6,000) in mid-2015. The country was therefore immediately faced with a reception crisis. The country is currently running reception on full capacity and with demand far outstripping supply. Also in 2014, before the main wave of 2015, reception capacity was continuously under pressure.

The large number of arrivals therefore had **serious consequences on the assistance provided to the asylum seekers and to their living conditions**. As from October 2014, applicants for international protection are no longer entitled to food allowances<sup>180</sup>. Food is provided to people in the reception centres. Furthermore, in 2014 a number of applicants could not be granted accommodation at all and were therefore homeless<sup>181</sup>. Hungary also indicates it needs more social workers to deal with the situation, an issue that is currently being addressed.<sup>182</sup>

According to the Survey, the staff to process the number of applications was also insufficient. In 2013, applications for international protection increased by 776% in comparison to the previous year: this caused a significant burden on the asylum authority in terms of processing the claims<sup>183</sup>. In 2014, the applications more than doubled compared to 2013, which further also resulted in several procedural delays<sup>184</sup>. The increasing trend continued during the first months in 2015, causing a significant backlog of applications: almost 27,000 cases were pending at the end of February 2015, predominantly from Kosovars (21 380)<sup>185</sup>. The backlog further increased to over 50,000 by August 2015.<sup>186</sup>

The survey reports however that the majority of asylum seekers left Hungary shortly after their arrival, having used Hungary mainly as a transit country. Asylum procedures were discontinued for persons who had moved on: for example, in 2014, 83% of all applications was considered withdrawn. The trend of withdrawn applications closely followed the increasing trend in the number of applicants, as shown by the very high number of Dublin transfers requests from other EU Member States<sup>187</sup>. As a consequence, the number of asylum seekers remaining in the territory has not been as high as the

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<sup>180</sup> Aida Country Report - Hungary 2015, p. 41.

<sup>181</sup> Aida Country Report - Hungary 2015, p. 9.

<sup>182</sup> Interview with Hungary

<sup>183</sup> Aida Country Report - Hungary 2014, p. 14.

<sup>184</sup> Aida Country Report - Hungary 2015, p. 31.

<sup>185</sup> EASO, Description of the Hungarian asylum system, p. 2. Available at <https://easo.europa.eu/wp-content/uploads/Description-of-the-Hungarian-asylum-system-18-May-final.pdf>

<sup>186</sup> Interview with Hungary

<sup>187</sup> EASO, Description of the Hungarian asylum system, *ibidem*.

number of incoming applicants and the impact on the services and integration activities of the Member State was therefore reduced.

### **Management of the situation**

Hungary reported in its survey that various measures were activated in order to face the increasing pressure on the national asylum system, both at national as well as EU level. Hungary does have a national emergency plan that is aimed at dealing with the situation and is being applied in response to the situation. Under this plan Hungary will meet with relevant authorities to better coordinate mitigation and response.

At national level, the following measures were implemented, distinguishing between measures aiming for prevention, mitigation and response:

#### **Prevention:**

Emergency plan: According to the EMN Reception Facilities Study, Hungary has an emergency plan in place for cases of high influxes. As mentioned below, ERF funding granted in 2013 was also used by Hungary to implement contingency-planning.

#### **Mitigation:**

Budget flexibility: The national budget was increased and additional funds were allocated in order to cover for the costs of the measures as described in this section. Also in July 2015 the government allocated additional funding for tackling the situation;

Speeding up the asylum procedure by hiring more case-workers: In October 2014, the Government allocated additional funding to create 60 new staff members in the Office of Immigration and Nationality, both case workers and social workers, to process the large number of applications for international protection. Moreover, existing staff was deployed to most urgent task such as the registration of applications.

In 2015 the government hired another 450 staff to deal with the backlog of cases, bringing the total of case workers to 900.<sup>188</sup>

#### **Response:**

Creation of new reception facilities: In order to face the increasing pressure, Hungary decided to open new reception facilities in 2013 and in 2014. As of 2015, Hungary has three reception centres. A further two reception centres are planned for 1,000 places each.<sup>189</sup>

The latest AMIF application is also targeted at improving the capacity for housing unaccompanied minors;

Creation of emergency structures: Hungary restructured vacant state-owned estates which were subsequently used as emergency reception centres<sup>190</sup>.

At EU level, the following assistance was granted:

Hungary **applied for ERF funding** in October 2013 and for AMIF funding in November 2014, as reported in its survey, and was granted **financial emergency assistance** of EUR 1.1 million for 2013 and of EUR 1.2 million for 2014. The application for further

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<sup>188</sup> Interview with Hungary

<sup>189</sup> Interview with Hungary

<sup>190</sup> Aida Country Report - Hungary 2015, p. 45.



AMIF funding to be granted in 2015 was accepted on 23<sup>rd</sup> December 2014<sup>191</sup>. Under the 2013 Annual Programme, the funding was used to develop and implement contingency planning, increase capacity in reception centres, undertake renovation and purchase equipment. The 2014 AMIF contribution funded additional reception capacity, hiring of staff and further purchase of equipment.

In mid-2015 Hungary applied for additional AMIF funding, with a positive decision having been made in July.<sup>192</sup>

The Hungarian police also applied for ISF funding to deal with the purchase of registration equipment and other equipment to deal with first screening and transportation.<sup>193</sup>

EASO support has not been applied for and is currently not being considered;

Frontex support has been received by the Hungarian police in the form of a number of officers (30-40) supporting Hungary in surveillance and patrol of the external borders.

### **Impact of the support provided**

Hungary stated in the survey that the measures implemented at both national as well as EU level, helped Hungary to deal with the influx, mainly by having created additional reception capacity and better safeguarding of reception conditions. Funding provided through the ERF and AMIF contributed to restore and extend the capacity of reception centres and to create new infrastructures, including emergency structures to cope with large number of arrivals of asylum seekers. For existing reception facilities, funding was used to increase the level of reception conditions.

For example, the Vámoszabadi reception centre, close to the Slovakian border, was opened in August 2013 with capacity for 200 persons<sup>194</sup>. The Bicske centre near Budapest, a facility which was previously used as pre-integration centre, was converted to reception centre as well with a capacity of 464 individuals<sup>195</sup>. Thanks to EU funding, the Bicske and Debrecen reception centres were refurbished and the number of social workers therein employed has increased<sup>196</sup>. Another temporary reception centre with capacity for 300 persons became operative in Nagyfa, close to the Serbian border, in January 2015<sup>197</sup>.

The increase of human resources in procedures for international protection allowed to keep standard procedures fully functioning, such as the practice of personal interviews at the preliminary stage for all applicants<sup>198</sup>. The shift of staff deployed to register applicants however, resulted in a decrease in the number of first instance decisions which reduced from 1,334 in October 2014 to only 627 in December 2014 and further fell to 452 in January 2015<sup>199</sup>.

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<sup>191</sup> EMN Annual Policy Report on Asylum and Migration – Hungary National Report, p. 25.

<sup>192</sup> Interview with Hungary

<sup>193</sup> Interview with Hungary

<sup>194</sup> Aida Country Report - Hungary 2014, p. 39.

<sup>195</sup> Ibidem.

<sup>196</sup> EMN Annual Policy Report on Asylum and Migration – Hungary National Report, ibidem.

<sup>197</sup> Aida Country Report - Hungary 2015, p. 9.

<sup>198</sup> Aida Country Report - Hungary 2015, p. 26.

<sup>199</sup> EASO, Description of the Hungarian asylum system, ibidem.

## Italy 2011

The Study Team had identified a potential case of mass influx for Italy in 2011. In its survey and follow up interviews Italy confirmed that it witnessed a sudden and large pressure which impacted (by exceeding it) on the capacity of the national asylum system.

### Overview of the increase in the number of applications

In a short period in 2011, Italy experienced a substantial increase in the number of applications lodged for international protection. Overall, the total of **40,200** was the highest since 2001. In 2014 the total was **64,400**. In 2011 the number of asylum applicants went up from 800 in January to a peak of 7,000 in May. In 2014 the influx peaked in October at 9,000 applicants, up from 5,100 in August.

Figures 24 and Figure 25 show the number of asylum applications lodged in Malta in the years 2011 and 2014, by nationality. It highlights that the influx Italy experienced concerned a variety of third countries and not mainly one or a few third countries from a certain geographical area.

Figure 24. Asylum applicants by nationality (2011)

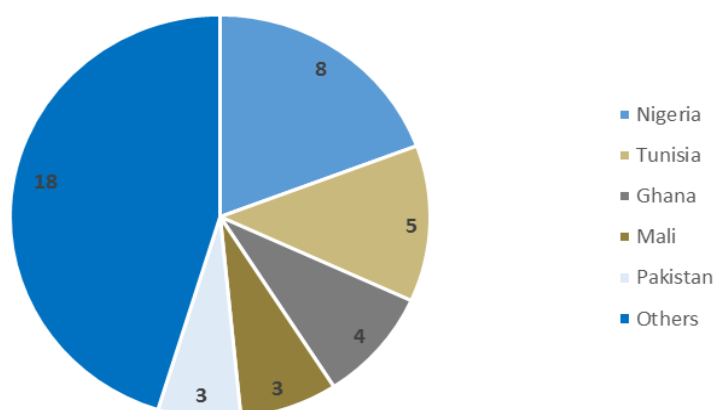


Figure 25. Asylum applicants by nationality (2014)

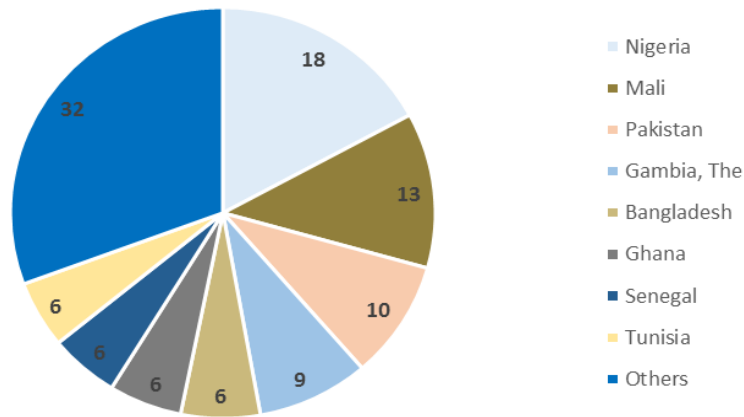
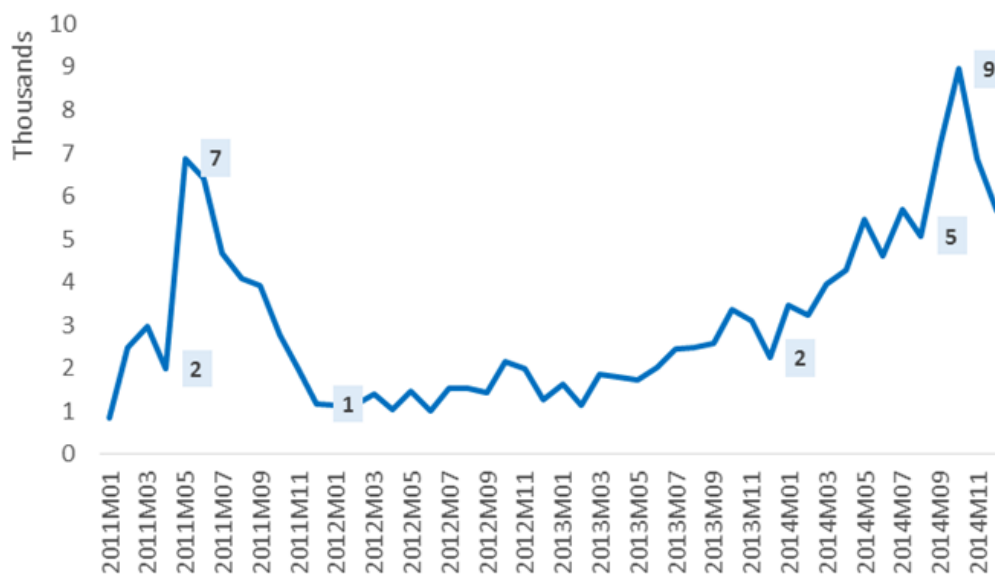


Figure 26. Monthly change in total asylum applications for 2011-2014



### Geo-political situation

The **pressure** exerted on Italy is mainly due to its geographical position and the political instability in the North African countries (e.g., the “Arab spring”, the Libyan civil war). These factors have contributed to the increasing **mixed migration flows**, whose composition, as presented above, has varied across the years.

### **Consequences of the increase on the national asylum system**

The sudden and high influx posed serious strains both on **the national reception system as well as on the processing of applications**. Reception facilities were overcrowded. In 2011, Italy had around 5,516 places in governmental reception facilities, to which around 4,000 (precisely 3,979) could be added from the SPRAR (Protection system for asylum seekers and refugees). However, this represented a total of less than 10,000 places against a number of landings nearly four-fold higher (62,692).

### **Management of the situation**

Italy reported in its survey that following the pressure exerted, various measures were activated to cope with the situation, both at national as well as EU level.

At national level, the following measures were implemented, distinguishing between measures aiming at prevention, mitigation and response:

#### **Prevention**

No measures implemented.

#### **Mitigation**

No measures implemented.

#### **Response**

On 12 February 2011, the Italian government declared an emergency situation (ENA):<sup>200</sup> in response to the large arrival of third-country nationals from North Africa, the adoption of delegate acts of the Ministry of the Interior on 11 and 13 April 2011 enabled the **civil protection department** to plan and implement a strategy with a wider group of stakeholders comprising the Minister of Interior, Department of the civil rights and immigration, the Conference of Regions, the national association of municipalities (ANCI) and provinces (UPI). This provided for a relocation plan among Italian regions (up to an overall capacity of 50,000): the distribution key was based exclusively on a direct ratio between regional and national population.

The **temporary residence permit for humanitarian reasons** was the (national) solution adopted by the Italian government to tackle the immigration emergency from North Africa. It was granted only to citizens of North African countries, arrived in Italy from 1 January to 5 April 2011. The residence permit, valid for six months, allowed free movement in the Schengen Area. According to the IT authorities is not possible to assess the share of people who were granted another status or left Italy after the humanitarian permit expired.

The former Minister of Interior, Maroni, flagged also the possibility to activate the **TPD** during an EU summit, which was followed up (unsuccessfully) by an exchange of letters between the European Commission and the Italian Permanent Representation. However, the activation was not formally pursued as TPD was considered not the appropriate instrument (i.e. being characterised by cumbersome procedures unlikely to provide immediate protection). The Italian authorities have informed the study team also of a letter sent in April 2015 by the current Ministry of Interior, Alfano, to Commissioner

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<sup>200</sup> [http://www.protezionecivile.gov.it/jcms/it/view\\_dossier.wp?contentId=DOS24090](http://www.protezionecivile.gov.it/jcms/it/view_dossier.wp?contentId=DOS24090)

Avramopoulos and Vice-Presidents Timmermans and Mogherini in which the possibility to activate the TPD was also mentioned as way to tackle the increasing number of arrivals.

**Financial emergency assistance** under the **ERF and national funding** allocated a total of EUR 860 million: the allocation of funding of EUR 120 million for the reception system was complemented by an additional EUR 740 in emergency funds granted in response to the increase of migration flows generating from North Africa. More than EUR 15 million were given to municipalities hosting a share of the 4,580 unaccompanied minors arrived in 2011.<sup>201</sup> Furthermore, particular attention was devoted to the promotion of professional integration for holders of international protection.

At EU level:

Between August and November 2011, additional resources were approved for the activation of emergency measures in Italy, to an amount of **EUR 14.52 million**.<sup>202</sup>

### **Impact of the support provided**

One of the main characteristics of the **emergency plan** (ENA) concerned the multinational composition of the fluxes, which involved thirty-three different nationalities.<sup>203</sup> Another shortcoming regarded the Italian reception system, whose structures were not prepared for the size of the inflow of refugees/migrants: derogations of the judicial and fiscal orders were consequently adopted. According to the Italian authorities, the ENA was considered effective in dealing with the situation and allowing the Italian authorities to cope with the emergency: it was then closed as of 1 January 2013. However, such plan could have reached a higher impact by granting humanitarian protection to the migrants from the very start. This may have allowed for a longer-term solution for third-country nationals (who were not sent back to their home country but allowed to stay after the emergency expired) and a wised allocation of funding.<sup>204</sup>

The **ERF funding** came in support to the Territorial Commissions (competent for refugee status determination as well as eligibility to subsidiary protection and national humanitarian status) including translation and interpretation, the reception centres for asylum seekers and the government services involved in the response to the emergency situation.

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<sup>201</sup> ISMU (2012), Diciottesimo Rapporto sulle migrazioni

<sup>202</sup> [http://ec.europa.eu/dgs/home-affairs/pdf/easo\\_annual\\_report\\_final.pdf](http://ec.europa.eu/dgs/home-affairs/pdf/easo_annual_report_final.pdf)

<sup>203</sup> Usually, as in the case of Kosovo, only one nationality was recalled in the declaration of emergency. [http://www.iutorino.it/sites/default/files/docs/ENA\\_LuisaGambaFinalVersion2015.pdf](http://www.iutorino.it/sites/default/files/docs/ENA_LuisaGambaFinalVersion2015.pdf)

<sup>204</sup> Ibid.

## **Malta 2011**

The Study Team had identified a potential case of mass influx for Malta in 2011. In its survey Malta confirmed that it “has faced disproportionately large migration and asylum pressures since 2002” and in particular faced a situation of mass influx in 2011 when the great increase in the number of arrivals exceeded the capacity of the Maltese asylum system. Overall, Malta reports on a high pressure exerted on its system in particular as it is among the Member States with the highest number of applications received per 1,000 inhabitants.

### **Overview of the increase in the number of applications**

In its survey, Malta described the increase in the number of asylum applications since 2002 as disproportionate and particularly challenging given the size of the country and its reception capacity.

In a short period in 2011, Malta experienced a substantial increase in the number of applications lodged for international protection. Overall, the total of **1,890**<sup>205</sup> was the second highest in terms of the share of asylum applications out of the total population (over 5,000 per million inhabitants, or 17.5 applications per 1,000 inhabitants<sup>206</sup>, second-highest after Sweden).

More significant than the annual number of applicants was the increase of 30 applicants in March 2011 to 1,125 (mostly Eritreans and Somalians) in April 2011, an increase of 3,650%. Numbers dropped to 355 applicants in May 2011 and remained under 100 per month for the rest of the year.

In the summer of 2013, the number of asylum applications again peaked, rising from 45 in June to 420 in July and 720 in August, after which it dropped to 280 in September.

Figures 27 and Figure 28 show the number of asylum applications lodged in Malta in the years 2011 to 2015 (first three months). Average for the four years from 2011 to 2014 hovered between 100 and 180, though for Malta the influx is not one of constantly high numbers, but rather very significant sudden increases.

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<sup>205</sup> 126,705 applicants according to EASO 2013 Annual Report, available at: <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

<sup>206</sup> 2014 UNHCR Report on Asylum Levels and Trends Industrialized countries, p.13. Available at <http://www.unhcr.org/551128679.html>.

Figure 27. Monthly change in total asylum applications for 2011-2015

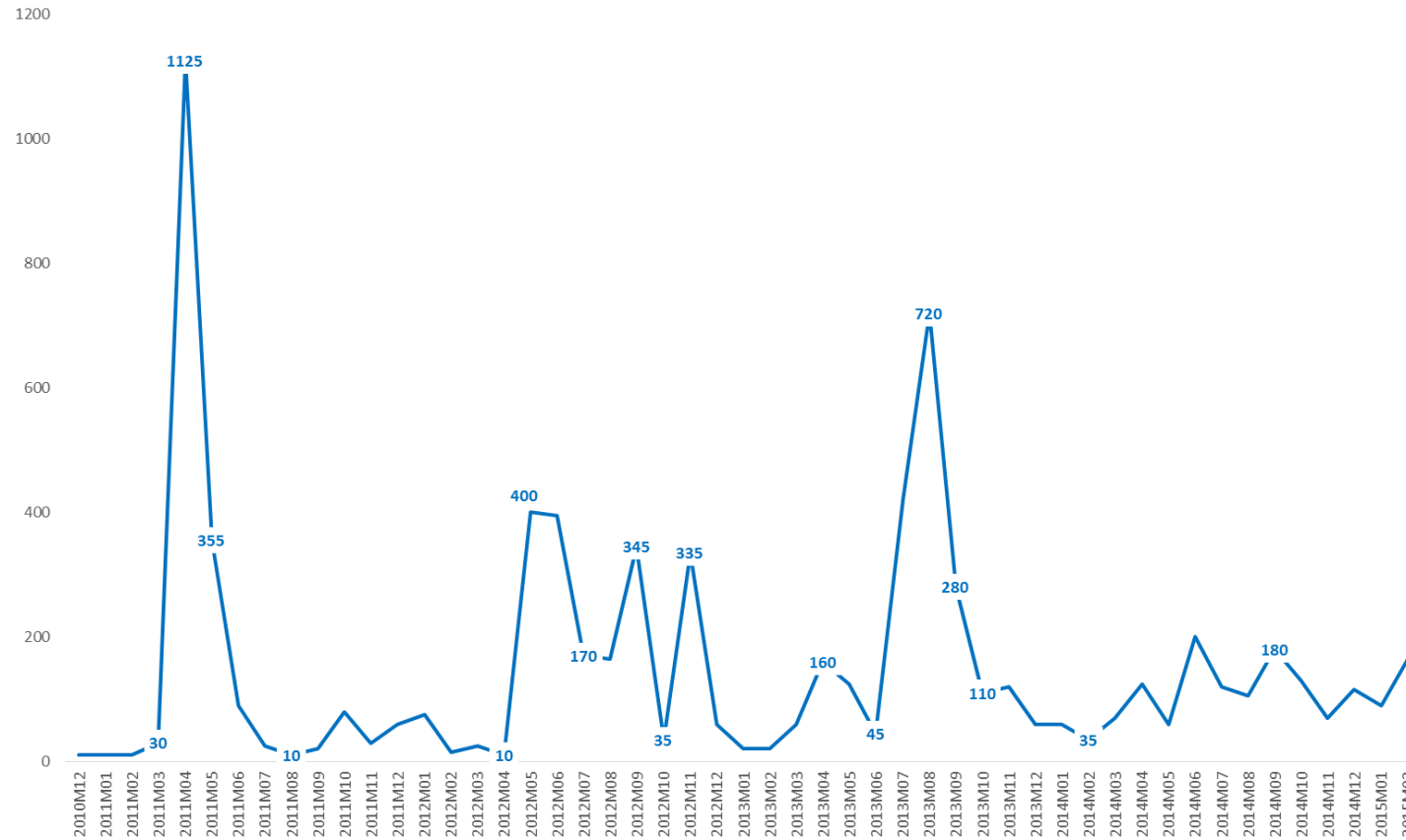
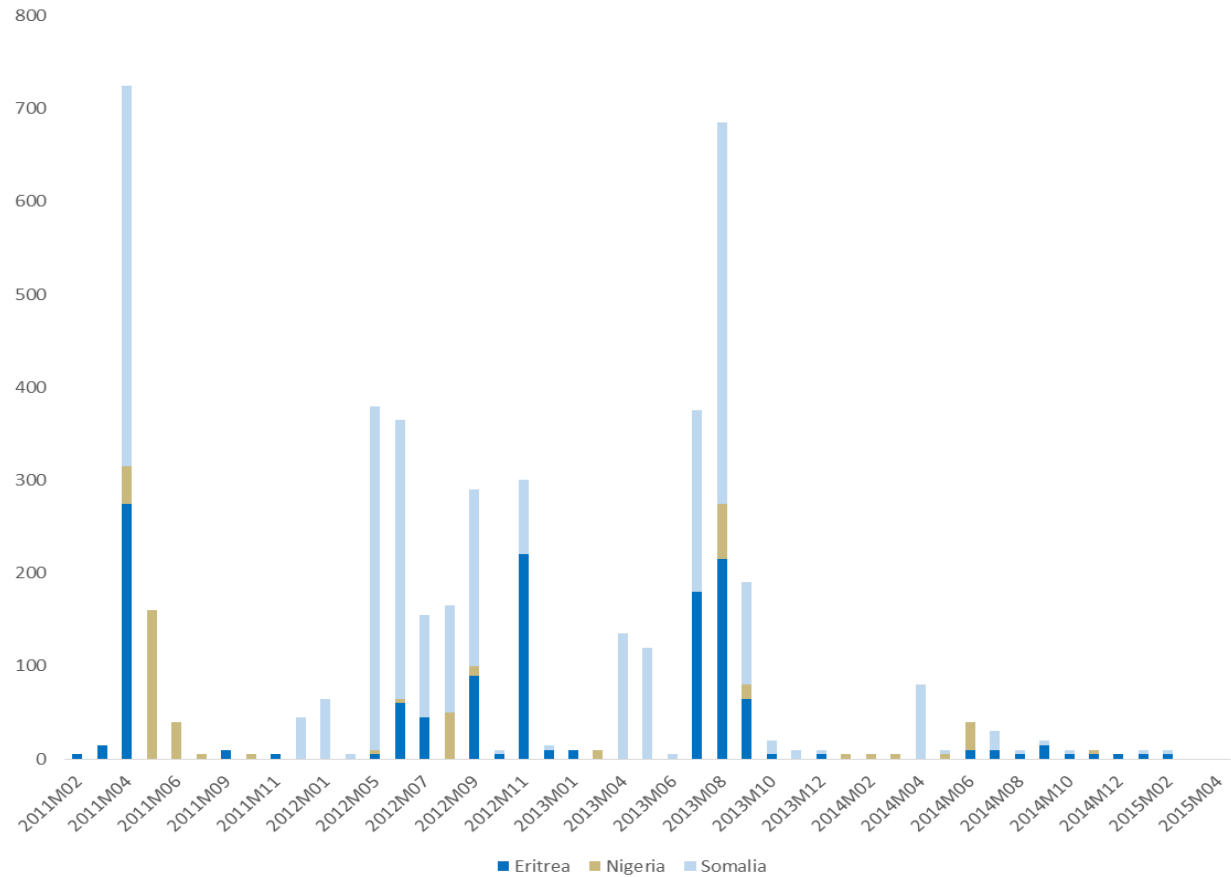


Figure 28. Total number of asylum applications between 2011 and 2015 for main citizen groups





### Geo-political situation

The **constant pressure** exerted on Malta since 2002 is mainly due to its geographical position, the size of the country and to the political instability in the North African countries (e.g., the "Arab spring", the Libyan civil war). These factors have contributed to the increasing and **persistent flow of asylum seekers** with mixed nationalities, but mostly originating from regions of conflicts (Syria, Horn of Africa). The overall **recognition rate** for applicants applying in Malta has been high in recent years, from an average of 70% up to 90% in certain years.

### Consequences of the increase on the national asylum system

In the survey Malta indicated that the high influx posed serious strains both on **the national reception system as well as on the processing of applications**. Reception facilities were overcrowded with some applicants being accommodated in "mobile homes". Also, the staff to process the number of applications received was considered insufficient, which initially resulted in a backlog of cases.

The consequences not only related to the number of asylum applications, but also to the number of refugees who remained in Malta, considering that the recognition rate for those applying in Malta has been of average 70%, and "even reached 90% in certain years". Consequently, in July 2014 the total number of refugees in Malta amounted to 10,921<sup>207</sup> or 2.6% of its total population. This situation required substantial efforts for integration activities, and other rights to which refugees are entitled under the Qualification Directive, e.g. the provision of appropriate social, medical, educational services, etc.

### Management of the situation

Malta reported in its survey that following the pressure exerted, various measures were activated to cope with the situation, both at national as well as EU level.

At national level, the following measures were implemented, distinguishing between measures aiming at prevention, mitigation and response:

#### Prevention

No measures implemented

#### Mitigation

According to its survey, **the number of caseworkers was increased** to process the large number of applications for international protection. A total of **164 decisions granting international protection** were issued in the month of April 2011 alone, among which 72 were recognised refugee status, 84 subsidiary protection and 8 other forms of protection.

#### Response

**In response to the influx, on 31<sup>st</sup> March 2011 Malta formally requested the activation of the temporary protection mechanism**, deeming that the criteria set by the Directive were formally met. The request was forwarded by way of a signed letter from the Minister to the Commissioner for Home Affairs and subsequently also discussed in a COREPER Council meeting (Malta approached other Member States on a bilateral

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<sup>207</sup> UNHCR Statistical Snapshot, available at <http://www.unhcr.org/pages/49e48eba6.html>

basis). However, Malta reported that Member States did not consider that conditions for the mechanism to be triggered were fulfilled. The European Commission sent a short written reply that the situation was not yet corresponding to the cases covered by the scope of the Directive.

At EU level, Malta was granted:

**Financial emergency assistance** under the **ERF** allocated for the years 2008-2013 increased from EUR 416,000 in 2008 to a triplication in 2009 (EUR 1,113,040) and reached EUR 3,716,800 for the 2013 Annual Programme. The allocation of funding in 2011 (EUR 1,417,719) was complemented by an additional EUR 1,201,000 in emergency funds granted in response to the increase of migration flows generating from North Africa. A substantial part of the five years EU funding (33%) was allocated for emergency measures which mostly funded infrastructure and reception conditions<sup>208</sup>.

The **EUREMA project**<sup>209</sup> put in place between 2010 and 2011 and co-funded under the ERF, was extended to support Malta with the large inflow of asylum seekers. The objectives were to implement a principle of solidarity among Member States, to identify relocation solutions and to improve situation for people remained in Malta. As a result, 228 individuals were relocated under EUREMA – phase 1, between 2010 and 2011. EUREMA Phase 2 allowed to relocate further 234 beneficiaries mainly to Germany, Norway, the Netherlands, Ireland and Switzerland (until July 2012)<sup>210</sup>. The programme, extended until the end of 2013, faced some difficulties in relocating beneficiaries to certain Member States: the number of beneficiaries actually relocated amounted to just over 70% of places pledged. Encountered difficulties included: limited reception capacity and restrictive criteria applied by some Member States in selecting beneficiaries of relocation; the negative perceptions of beneficiaries with regard to their prospects of family reunification and integration in the Member State of relocation<sup>211</sup>.

At bilateral level, **France and Germany supported Malta through the relocation of persons** to their territory. French authorities provided assistance to Malta in 2009, relocating 95 beneficiaries of international protection as part of a project co-financed under the ERF Community Actions. Another 147 beneficiaries of international protection were relocated to Germany in 2011 in the frame of a bilateral agreement.

Under the **United States Resettlement Programme**, based on a partnership between the UNHCR, the IOM, the US Department of Homeland Security (DHS) and local NGOs, a total of 307 beneficiaries of international protection were relocated to the United States in 2011.

## **Impact of the support provided**

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<sup>208</sup> Malta ERF Annual Programme 2011. Available at <https://eufunds.gov.mt/en/EU%20Funds%20Programmes/Migration%20Funds/Documents/1%20ERF%202011%20Rev%20AP.pdf>

<sup>209</sup> A pilot project for intra-EU re-allocation of beneficiaries of protection from Malta

<sup>210</sup> EASO fact finding report on intra-EU relocation activities from Malta <https://easo.europa.eu/wp-content/uploads/EUREMA-fact-finding-report-EASO1.pdf>

<sup>211</sup> See the report "A Descriptive Analysis of the Impacts of the Stockholm Programme 2010-2013", p. 11 and the Fourth Annual Report on Immigration and Asylum (2012), COM(2013) 422 final, p. 13.

The **ERF funding contributed to sustaining Malta's reception capacities and infrastructure**. For instance, under Action 1 (emergency support) of the Annual Programmes of 2011 and 2012 Malta allocated 70% of its ERF funding to strengthen its reception capacities and infrastructure. These resources allowed to provide food supplies, medical and material aid, improvement of health safety and security measures in reception centres, transportation and renovation of accommodation facilities. Measures funded included: trainings and language courses for residents in open centres; accommodation and support services to vulnerable people as well as capacity building activities for actors handling the processing of asylum applications<sup>212</sup>. The 2009 closure report within the framework of the ERF noted several achievements between 2008 and the first half of 2011. Improvements were registered with regards to: hygiene and sanitary facilities which benefitted around 1,500 asylum seekers; medical care provided to 600 residents of open centres and education and training for 100 residents; a total of 2,400 asylum seekers were granted information sessions on asylum procedures. Moreover, accommodation centres were refurbished and new infrastructures built added capacity for 257 individuals. Finally, the supply of 4 mini-buses ensured transportation for 1,060 residents. Indeed, the UN High Commissioner for Refugees acknowledged the **important steps taken by Malta to improve its reception system**, even though several areas still require particular attention. The UNHCR stressed the urgency to strengthen rescue at sea and of "improving access to asylum and solutions for people in need of international protection", with particular attention to most vulnerable people, such as unaccompanied and separated children<sup>213</sup>.

The number of beneficiaries of international protection relocated from Malta under the **EUREMA II project remained modest**, especially when compared to the numbers of asylum seekers arriving in Malta and to the number of new decisions granting international protection status<sup>214</sup>. Indeed, a representative from the Maltese government commented that EUREMA "relieved the pressure slightly, but at the same time numbers were not significant as to make a lasting impact".

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<sup>212</sup> <https://eufunds.gov.mt/en/EU%20Funds%20Programmes/Migration%20Funds/Documents/Emergency%20measures%20AP%2011.pdf>

<sup>213</sup> <http://www.unhcr.org.mt/news-and-views/north-africa-situation/768-joint-iom-unhcr-report-on-reception-of-unaccompanied-and-separated-children-launched-in-malta>

<sup>214</sup> See report the Stockholm Programme Analysis, note 7, p. 45.

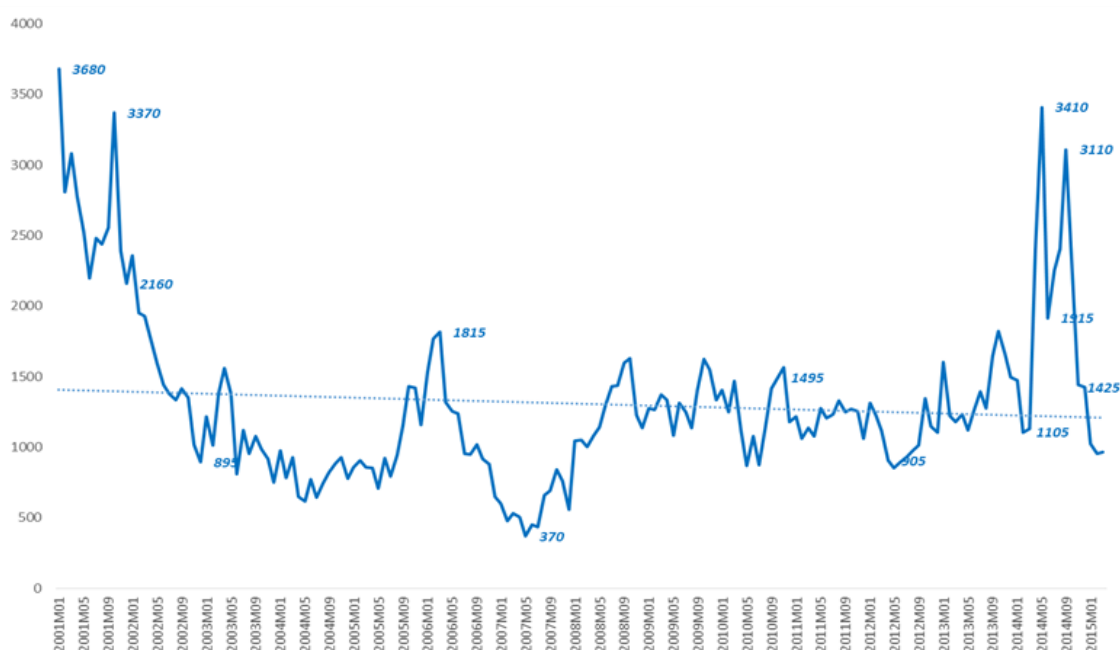
## Netherlands

The Study Team had identified a possible case of mass influx in the Netherlands during 2014. In its survey, the Netherlands confirms that it experienced a situation of mass influx when the total number of new asylum applications over the whole of 2014 increased by 87% in comparison to 2013. However, the peak experienced in 2015 was substantially higher than that of 2014, with an absolute high in July 2015.

### Overview of the increase in the number of applications

Since 2001 the number of asylum applicants has averaged 1,300 per month, though with significant fluctuations: averaging over 2,700 in 2001 and remaining between 600 and 1,500 for the years 2002 to 2013. In 2014, the number of monthly asylum applicants averaged over 2,000 applicants, or an increase of 43%.

Figure 29. Development of asylum applicants between 2001 and 2015.

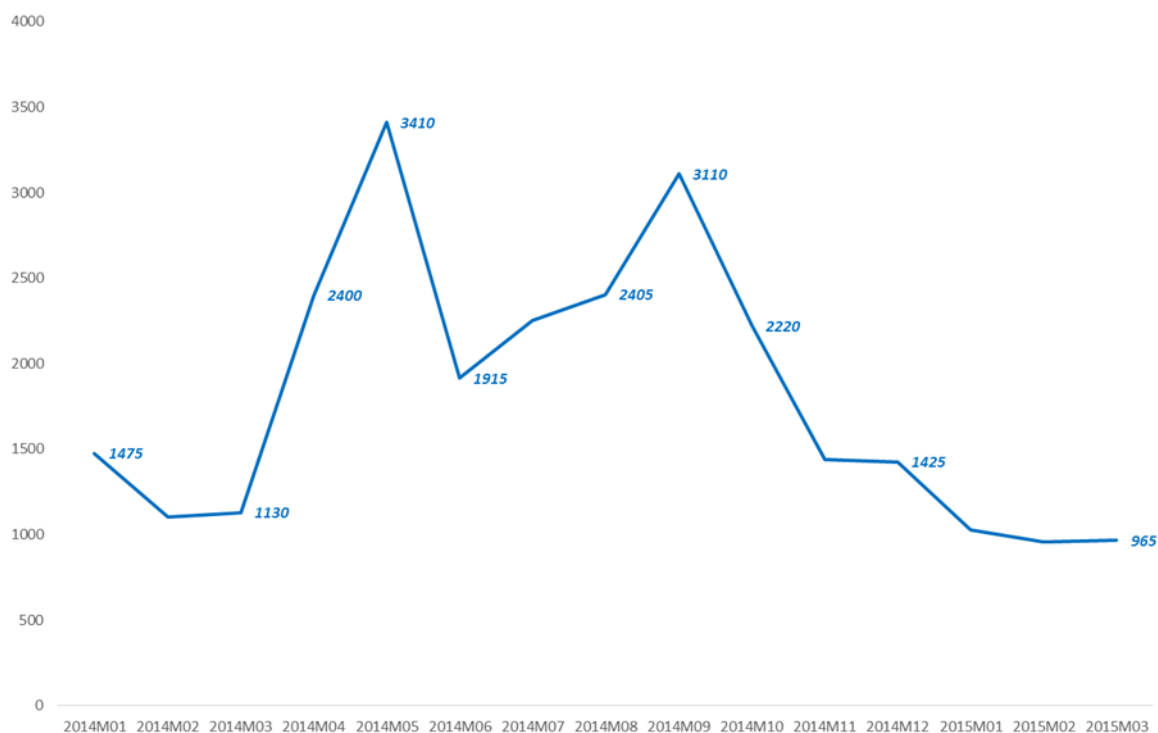


According to the analysis of Eurostat data, the Netherlands experienced a significant increase of applications during 2014. The total number of persons that lodged an application for asylum in 2014 amounted to 24,530<sup>215</sup> which is an 87% increase in comparison to 2013 when it received 13,085 applications<sup>216</sup>. The most significant increase was in the period between March and May 2014, when the number of applicants rose from 1,130 via 2,400 (112% increase compared to the previous month) to 3,410 (42%), an increase of 200% from March to May 2014.

<sup>215</sup> Eurostat annual figures. The total of monthly Eurostat figures show 24,285 asylum applications.

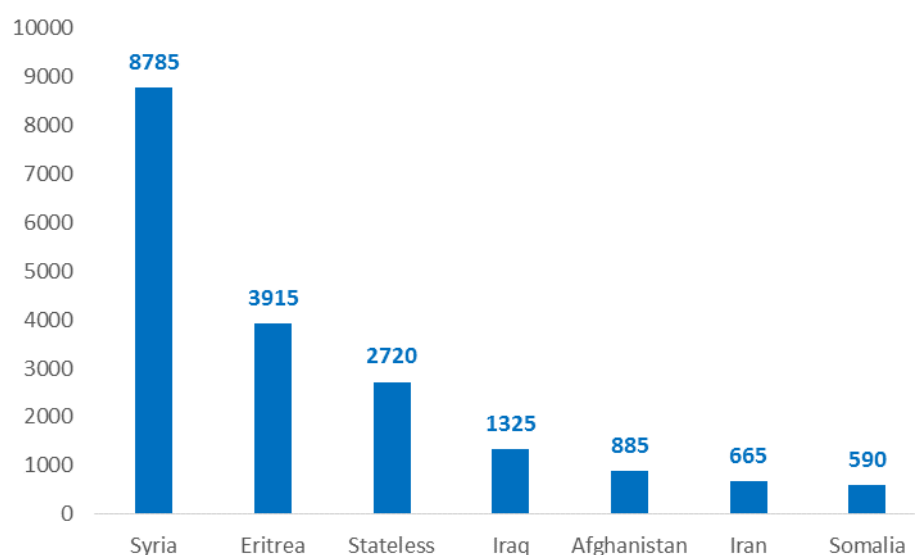
<sup>216</sup> Eurostat annual figures. The total of monthly Eurostat figures show 16,900 asylum applicants.

Figure 30. Monthly asylum applicants in 2014 and three months of 2015



Overall in 2014 the largest number of asylum applicants were from Syria. However, in the months of March to May the highest number were Eritreans. The number of Syrians was more evenly distributed over the year.

Figure 31. Total number of asylum applicants by main nationalities



### **Consequences of the increase on the national asylum system**

The Netherlands, in its survey, reports on a lack of reception capacity as a consequence of the increase of applications in 2014 within a relatively short period of time (from March to May in 2014). Existing facilities were overcrowded and some applicants had to be accommodated in temporary reception facilities (e.g. halls), which, according to the survey, “did not meet the quality standards of existing reception facilities”.

Moreover, there was also a sharp increase in the number of pending cases, which almost tripled in 2014 in comparison to 2013. Consequently, procedures for processing applications increased in length, and sometimes exceeded the maximum period allowed under EU legislation (in approximately 10% of all applications). In 2015 it was increasingly difficult to process cases within the legal timeframe of 6 months, with a number of cases exceeding this requirement.

Waiting time for social housing has increased from 4 to 14 weeks in July 2015.

### **Management of the situation**

At national level, the Netherlands implemented several measures to address the significant increase of applications. These are mentioned below, distinguishing between measures aiming for prevention/mitigation and response:

#### **Prevention**

Existing reception facilities operate on a “more-beds-available than needed basis”; the occupancy rate in the Netherlands is generally around 95%. As such, the Netherlands had some buffer capacity available in existing facilities to accommodate applicants (EMN report);

#### **Mitigation**

The budget was increased to cover the costs of the measures taken as described below, i.e. budget flexibility (Survey);

Two temporary emergency shelter facilities were set up in 2015 to meet growing need while the government searches for a more long-term solution. Acquiring additional capacity is difficult as it requires local level cooperation and can be time-consuming;

More case-workers were hired to speed up the asylum procedure (Survey). As a result of the current 2015 pressure, more case workers were hired at the Immigration Service;

Fast-tracking procedures were applied to Syrians starting in 2013 in order to speed up the asylum procedure (AIDA report)<sup>217</sup>; the AIDA report notes that all asylum applications of persons fleeing Syria are dealt with in the short regular procedure and in most cases the asylum seeker is already granted a residence permit after 4 days.

Efforts were made to facilitate a more rapid outflow from reception facilities of applicants who had received a positive decision (Survey). In July 2015 the outflow to social housing is at 500 per week (from a weekly number of applications of 1,700), which is high but not sufficient to keep up with demand;

### **Respond**

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<sup>217</sup> [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_-\\_netherlands\\_thirdupdate\\_final.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_-_netherlands_thirdupdate_final.pdf)

Additional reception capacity was created in existing reception facilities and new temporary reception facilities were also established - overall, approximately 10.000 extra places were realised in 2014 (Survey);

The government is considering a second first instance point of registration in order to better manage current flows

The government is able to respond to the increased influx by acquiring temporary property for the reception of asylum seekers, a system that allows additional capacity when needed and relinquishing additional capacity when no longer needed. However, there is sometimes a lag in response and thus the ability to provide for immediate response.

Moreover, the Netherlands also adopted a holistic or integrated approach to deal with the influx insofar as that they also addressed other elements related to the asylum reception system (see the "chain management approach" advocated in the EMN Reception Facilities Study). For example, the survey reports that the Netherlands limited the inflow of applicants by stepping up its efforts to counter smuggling networks and trafficking in human beings by e.g. better investigation and prosecution of these crimes. Also, in the context of the asylum procedure a closer investigation of identity, nationality and travel routes to NL was undertaken.

At EU level, the Netherlands was allocated 1, 1 EUR emergency funding under the ERF for the year 2013. The Netherlands had requested emergency funding in 2013, anticipating a possible sudden influx as experienced in previous years as well. The emergency funding was used to finance the above mentioned measures (e.g. hiring of more case workers, facilitating outflow from reception facilities, efforts to counter smuggling/trafficking in human beings etc).

In 2014 and 2015 the government did not actively go down the road of additional EU funding as a response to the present peak in asylum applicants

### **Impact of the support provided**

In its Survey, the Netherlands reports that it successfully created approximately 10,000 additional reception places to accommodate applicants for international protection in 2014. It is reported, however, that the outflow of applicants from reception centres who have received a positive decision, continues to present challenges; the transition from reception centres to social housing in municipalities proves very difficult and lengthy in practice. Social housing is available to a limited extent, at least in the time frame in which the authorities need to act. Demand is higher than supply, with the result of a backlog of housing availability. As a result, the occupation rate in reception centres remains high, even if the number of applications have stabilised.

With regard to the backlog of applications following the influx in 2014, the survey reports that this has almost completely been brought back to zero. However, it adds that the Netherlands now faces a new backlog of decisions concerning family reunification following the influx of applicants in the beginning of 2015.

## Poland

The Study Team identified a possible situation of mass influx/pressure on the Polish asylum system in 2007, 2009 and 2013. However, Poland, in its Survey, did not consider to have experienced any pressure on its asylum system during this period, also confirmed during the follow-up interview.

### Overview of the increase in the number of applications

The number of monthly asylum applicants in Poland has fluctuated over the years and a peak was registered in 2013, after which figures dropped by nearly half for 2014. On the basis of the first three months of 2015 it seems figures will, under current circumstances, not top those of the year 2014.

Figure 32. Total number of asylum applicants in France (in thousands) over the period 2001 to 2015

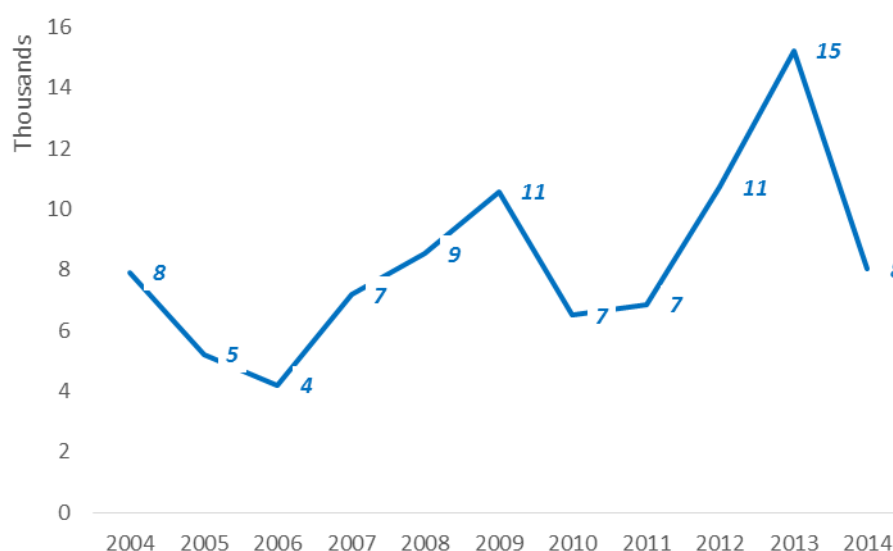
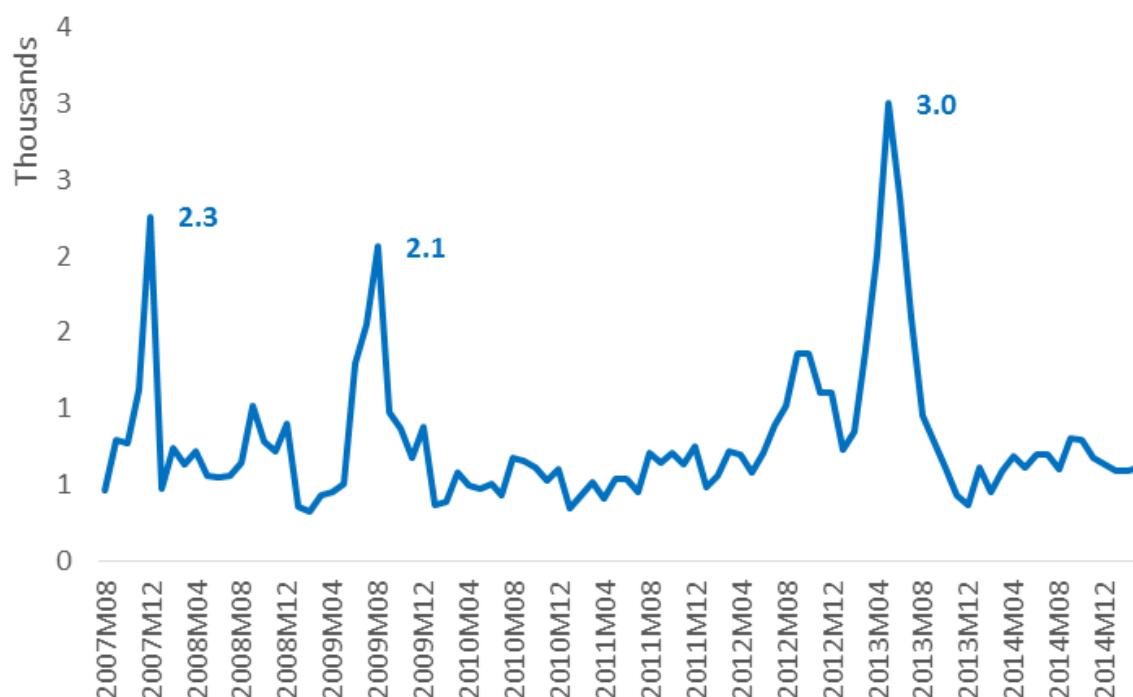


Figure 33 provides an overview of the monthly fluctuations in asylum applicants from 2007 to 2014. There were three peaks - in December 2007, August 2009 and May 2013. The increase from November to December 2007 was 100% (1,126 to 2,260), 38% from July 2009 to August 2009 and 50% from April to May 2013). The two-month increases in the peak months were 190% in December 2007, 59% in August 2009 and 116% in May 2013.

The biggest groups in these peak years were Russians, constituting 99% in December 2007 and 96% in May 2013. In August 2009, the main groups were Georgians (67%) and Russians (31%).



Figure 33. Total number of asylum applicants in Poland (in thousands) over the period 2007 to 2014



### Geo-political situation/factors contributing to influx

The high increase in asylum seekers from both Russia and Georgia is related to the Russo-Georgian war that started in 2008, which centred on South Ossetia and Abkhazia.

Furthermore, the Crimean Crises in Ukraine in 2014 was also expected to lead to a high influx of asylum seekers in Poland. However, as explained below, the number of applicants was not as high as expected.

### Consequences of the increase on the national asylum system

A Polish representative from the Ministry of the Interior explained during an interview that, despite the high increase in the number of asylum applications in 2007, 2009 and 2013, Poland **did not experience (significant) pressure on its reception system**. Both in 2009 and 2013 the centres were full, but “did not exceed the maximum number of places available”. Reception capacity proved sufficient, for two reasons:

Poland offers the possibility for asylum seekers to receive subsistence allowance instead of accommodation in a reception centre. Many asylum seekers make use of this option and found accommodation outside reception centres (in 2007, 2009 and 2013). To be eligible to receive subsistence allowance, asylum seekers have to apply and indicate the address where they will be staying (having found accommodation is thus a prerequisite to receive subsistence allowance).

Poland is primarily used as transit country and, according to the interviewee, in 2013 more than 75% of asylum seekers that had lodged an application for asylum moved on to different Member States. Indeed, according to the AIDA report, in 2013, a total of

9938 cases were discontinued as asylum seekers did not reach the reception centre to register for social assistance (which should be done within two calendar days) and 430 cases were discontinued because the authority received (explicit) information that they had left Poland. Admittedly, many asylum seekers were subsequently returned to Poland by Dublin transfers, but the Dublin transfers happened gradually, spread over time, and did not present any real challenges for reception capacity according to the interviewee.

We would further also like to explore what the consequences were of the increase, if any, on the processing of asylum claims in 2007, 2009, 2013.

### **Management of the situation**

No measures were implemented in 2007, 2009 either at national or EU level.

In 2013-2014 the following measures were implemented at national level, distinguishing between measures aimed at prevention, mitigation and response:

#### **Prevention**

Contingency plan: At the end of 2013/beginning of 2014, Poland developed a contingency plan following the crisis in Ukraine. Poland expected high numbers of applicants from Ukraine. The plan also included the possible activation of the national form of temporary protection, as discussed at high level within different ministries. The plan was however never implemented as the number of asylum seekers from Ukraine were not as high as expected, whilst applications from other nationalities dropped, most notably Chechens. Also, most asylum seekers from Ukraine applied for the subsistence allowance and were thus not accommodated in reception centres.

#### **Mitigation**

No measures implemented

#### **Response**

No measures implemented

### **Impact of the support provided**

In relation to reception, the provision of subsistence allowance did put a strain on the national budget, but overall the interviewee stated that the provision of subsistence allowance is considered less costly than the provision of accommodation in reception centres.

## Sweden 2013-2014

Despite the significant increase in the number of asylum applications, Swedish national authorities reported that they have not experienced a situation of mass influx, but a pressure on their asylum system since the summer 2012 and during 2013 and 2014.

### Overview of the increase in the number of applications

Annual asylum statistics from Eurostat show that the number of applicants increased from nearly 30,000 in 2011 to 44,000 in 2012, 54,000 in 2013 and over 81,000 in 2014.<sup>218</sup> The level of 30,000 per year could be considered systemic, as it was experience for many years.<sup>219</sup>

Figure 34 provides an overview of the total number of asylum applicants from 2013 to April 2015. In this period, the total number of monthly applicants for asylum always exceeded 3,000, while the country experienced increased by 61% (nearly 3,000 people) from August to September 2013 and rose from 4,100 applicants in April 2014 to nearly 10,000 in September 2014, or 66% over that 5 month period.

Figure 34. Overview of asylum applications (2013-2015)

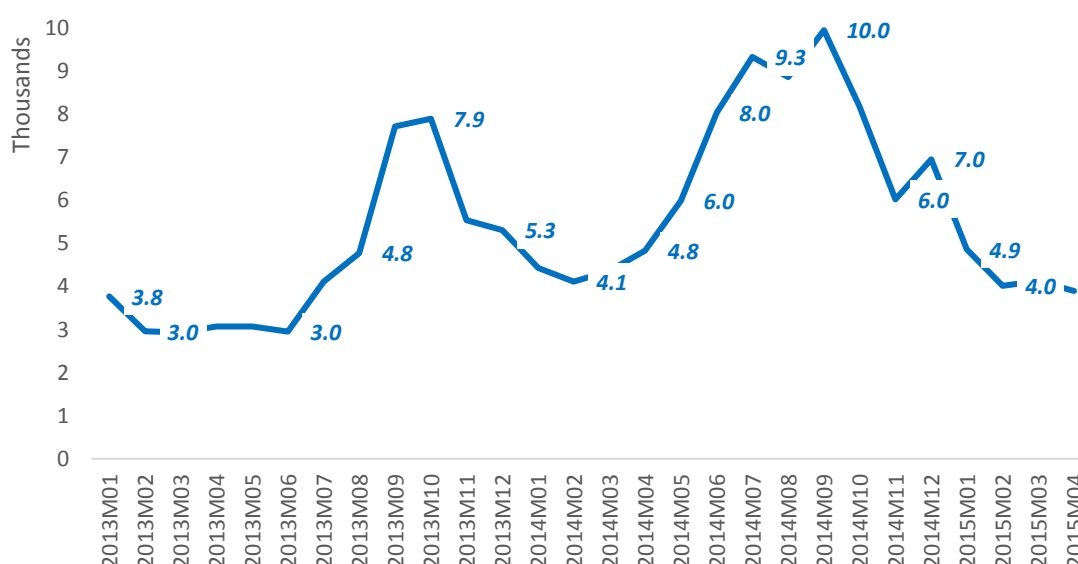
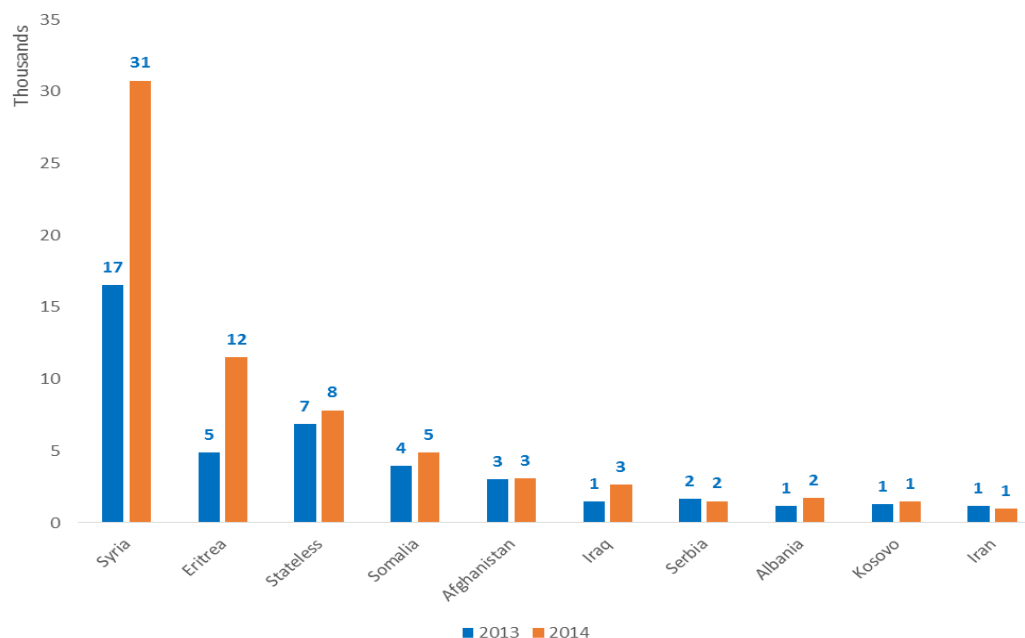


Figure 35 shows the main nationalities for the applicants in 2013 and 2014. By far the largest number of asylum applicants in 2013 and 2014 were from Syria, followed at a distance by Eritreans and stateless applicants. The highest monthly amount of applicants was Syrians in September 2014 (4,005), with the highest monthly increase for Syrians being recorded in September 2013, rising to 2,745 from 1,200 in August.

<sup>218</sup> Monthly asylum figures show some variations, but do not change the rounded up figures observed in this period.

<sup>219</sup> Follow-up interview with the Swedish Migration Agency on 10 July 2015

Figure 35. Shares of asylum applicants per main nationality



### Geo-political situation

The Sweden Migration Agency, through its migration intelligence unit, looks carefully at the geo-political factors that may influence in the upcoming inflow of asylum seekers. In particular, the following elements are considered in their prognosis:

- Conflict zones (i.e. Syria, Iraq, etc.);
- Neighbouring region (i.e. Turkey as most refugees come from other than the country of origin);
- Travel routes into Europe (i.e. Central-Mediterranean, Western Balkan, etc.);
- Intra-European decisions and how these affect secondary movements;
- The national situation, in particular how the asylum decision making affects applicants seekers.

### Consequences of the increase on the national asylum system

Despite the increasing number of applications, the Swedish Migration Agency's (SMA) ability to handle the increased numbers remained intact, though the number of measures undertaken imply a certain pressure both on the national reception system as well as the processing of applications.

According to the information provided by the Deputy Director General and Director of Operations at the SMA<sup>220</sup>, Sweden had to cope with a significant increase of applications since the summer of 2012, when the number of applications doubled as compared to the previous six months period.

<sup>220</sup> Follow-up interview with the Swedish Migration Agency on 10 July 2015

Sweden ranked fourth in 2013 as to the number of pending cases registered<sup>221</sup>: this could be also considered an adverse effect on the national asylum system.

According to the Swedish Migration Agency the definition of pressure should take into account not only the number of applications but also the number of accommodated people and those granted stay as well as the family member who may lodge an application to reunite in the following months/years. The longer-term concept of “pressure on the society” should be therefore part of the picture (in terms of efforts required by the MS to integrate people in the society).

### **Management of the situation**

The Swedish Migration Agency has taken a number of measures to cope with the increased number of applications.

At national level, the following measures were implemented, distinguishing between measures aiming for prevention, mitigation, and response:

#### **Prevention**

**Emergency plan:** in December 2013, the SMA developed a new emergency plan to create a capacity to manage up to 3,000 applications per week (as opposed to 1,600 previously), whereby 1,200 applications per week are considered ‘normal’ (rather than the previous 900).

**Prognosis:** based on the migration intelligence at SMA, Sweden is able to provide reliable estimates of the situation in the coming year(s). Last year’s prognosis proved to be almost correct (80,000 against a bit more than 81,000). This allows the system to be ready to face upcoming (realistic) challenges. Prognosis for this year are about the same, slightly lower for 2016. However, these analysis are updated five times per year.

#### **Mitigation**

Speeding up the asylum procedure by employment of **more staff and other organisational changes**: according to EASO,<sup>222</sup> an additional Migration Court opened in Luleå on 1 October 2013 (however, this was the result of a decision taken before the pressure started in summer 2012), while at the same time the SMA increased its capacity with an additional Administrative Procedure Unit. Due to the increasing caseload of unaccompanied minors as well as Dublin cases, the SMB opened an additional unit for each of these purposes in Stockholm (Dublin) and in Malmö (UAM). A case differentiation approach was necessary to handle more applications.

In general, **staff relocation from other units and recruitment** was used as a means to increase efficiency, including extended opening hours (shift work for staff) at application units. This is confirmed by the AIDA 2013 Annual report.<sup>223</sup> Staff was employed to work also during weekends: this was necessary to cope with the backlog that would otherwise result on the first days of the week when all applications of those

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<sup>221</sup> <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

<sup>222</sup> <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

<sup>223</sup> [http://www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_annual\\_report\\_2013-2014\\_0.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_annual_report_2013-2014_0.pdf)

arrived on Saturdays and Sundays had to be squeezed.<sup>224</sup> A housing secretariat was established. It is involved in capacity planning and coordinating housing for applicants.

## **Response**

Speeding up the asylum procedure by **fast-tracking procedures**: With regard to the high increase in applicants originating from Syria, a special operation was set up to process applications from Syrians that were previously granted temporary permits and now usually receive permanent residence permits. Dublin cases were granted priority within the new administrative arrangements.

Creation of **temporary reception facilities**: in order to meet the increased demands for housing as part of reception services, the SMA procured rented temporary accommodation. Before the pressure, the system was accommodating in such facilities 1,000 people, now figures reached 25,000.<sup>225</sup>

**Resettlement**: In 2013, in response to the conflicts in third countries, refugees from mainly the following countries of origin were resettled to Sweden: Syria, Eritrea, Afghanistan, Somalia and the Democratic Republic of Congo.

At EU level, Sweden was granted:

**Special Support** from EASO in 2012, more specifically in the form of training for the Swedish Migration Agency (SMA) on International Refugee Law and Human Rights, as well as the training module on Inclusion, in February 2013. However, it should be noted that according to the Swedish authorities the Special Support was **not a result of an asylum system under pressure**.

Despite the increasing number of applications, no **emergency funding** under the ERF was granted to Sweden and the SMA's ability to handle the increased numbers remained intact.

## **Impact of the support provided**

The fact that SMA was able to cope with the increasing number of application can be linked to vaster resources, a developed contingency plan based on previous experiences, better migration intelligence and a continuing improvement of the SMA's work.

According to EASO, the "case segmentation" for processing applications under accelerated procedures (manifestly unfounded applications and Dublin cases) resulted in a more efficient system, optimising performance and avoiding bottlenecks. The introduction of case segmentation principles has had a positive effect on end-to-end processing times for applications handled via accelerated procedures.

Renting temporary accommodation proved to be significantly more efficient than buying or building new reception centres. Accommodating asylum seekers is set by the Swedish national law, hence an obligation more than a response or a mitigating measure.

All these measures were taken without any additional budget, but solely by applying different arrangements. Extra budget for coping with such situations is being earmarked for next year.<sup>226</sup>

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<sup>224</sup> Follow-up interview with the Swedish Migration Agency on 10 July 2015

<sup>225</sup> Follow-up interview with the Swedish Migration Agency on 10 July 2015

<sup>226</sup> Follow-up interview with the Swedish Migration Agency on 10 July 2015



## **Annex 3 Statistics**

### **Evolution of the top 10 countries of origin:**

2007: Russia; Sri Lanka; Serbia (Kos.); Turkey; DR Congo; Armenia; Bangladesh; Guinea; PR China; Algeria;

2008: Russia; Serbia+ Kosovo; Mali; Sri Lanka; Turkey; DR Congo; Armenia; Bangladesh; Guinea; Haiti; Comoros.

2009: Serbia+Kosovo; Sri Lanka; Armenia; DR Congo; Russia; Turkey; PR China; Guinea; Bangladesh; Haiti.

2010: Kosovo; Bangladesh; DR Congo; Russia; Sri Lanka; PR China; Guinea; Haiti; Armenia; Turkey.

2011: Bangladesh; DR Congo; Armenia; Sri Lanka; Russia; PR China; Haiti; Kosovo; Guinea, Turkey;

2012: DR Congo; Russia; Sri Lanka; Kosovo; PR China; Pakistan; Turkey; Georgia; Albania; Armenia.

2013: DR Congo; Kosovo; Albania; Bangladesh; Russia; PR China; Guinea; Sri Lanka; Georgia; Pakistan.

2014: DR Congo; PR China; Bangladesh; Russia; Syria; Pakistan; Albania; Sudan; Haiti; Guinea.

### **Evolution of the backlog and average length of the procedure in first instance:**

2007: 8 248 cases in instance, of which 60% were older than 2 months<sup>227</sup>; 105 days average length of procedure

2008: 10 900 cases in instance, of which 57% were older than 2 months; 100 days average length of procedure

2009: 14 672 cases in instance, of which 7 672 were older than 2.5 months<sup>228</sup>; 118 days average length of procedure

2010: 18 800 cases in instance, of which 11 000 were older than 2.5 months; 145 days average length of procedure

2011: 22 474 cases in instance, of which 14 000 were older than 2.5 months; 174 days average length of procedure

2012: 24 260 cases in instance, of which 14 000 were older than 3 months<sup>229</sup>; 186 days average length of procedure

2013: 29 895 cases in instance, of which 17 000 were older than 3 months; 204 days average length of procedure (but decreasing throughout the year)

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<sup>227</sup> We assume that cases that are younger than that cannot be regarded as backlog as they cannot be processed in a shorter time.

<sup>228</sup> Considered as the shortest time needed for the processing at that date (due to increase in quality standards and in particular the interviewing rate of the applicants).

<sup>229</sup> This new shortest time comes from the quasi-generalization of the interview with the applicant.

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2014: 28 787 cases in instance, of which 16 000 were older than 3 months; 203.5 days average length of procedure.

**Evolution of the recognition rate in first + second instance:**

2007: 29.9%; 2008: 36%; 2009: 29.4%; 2010: 27.5%; 2011: 25.3%; 2012: 21.6%; 2013: 24.4%; 2014: 28%

**Measures put in place to speed up the asylum procedures and evolution of the number of decisions taken in first instance**

2007: 37 500 decisions

2008: 43 000 decisions; + 18 new case workers

2009: 46 200 decisions; + 5 new case-workers

2010: 48 500 decisions;

2011: 55 000 decisions; + 30 new case-workers, specifically dedicated to the processing of the backlog

2012: 60 128 decisions; + 5 new case-workers

2013: 62 056 decisions; + 10 new case workers; rationalization and simplification of working methods, particularly through pooling of specific caseloads between otherwise geographically specialized units, improved harmonization of the decisions, issuing of methodologies on specific profiles, IT support, better access to legal advice and COI, training, quality process.

Pooling of caseload from main countries of origin has proved efficient in reducing targeted yet numerous backlog; harmonisation and methodologies improved efficiency and quality simultaneously.

2014: 69 255 decisions; + 10 new case workers

2015: + 50 new case workers

**Evolution of the recognition rate of main countries of origin (first instance only)**

2007: Russia (18%); Sri Lanka (16.9%); Serbia (Kos.) (2.5%); Turkey (5.2%); DR Congo (10.2%); Armenia (3.2%); Bangladesh (3.2%); Guinea (24.7%); PR China (4.8%); Algeria (5.7%);

2008: Russia (21%); Serbia+ Kosovo (5.8%); Mali (46.9%); Sri Lanka (17.5%); Turkey (6.8%); DR Congo (19.4%); Armenia (3.9%); Bangladesh (2%); Guinea (23.5%); Haiti (6.6%); Comores (9.9%).

2009: Serbia+Kosovo (4.4%); Sri Lanka (24.1%); Armenia (5.2%); DR Congo (14.2%); Russia (15.3%); Turkey (5.2%); PR China (12.9%); Guinea (18%); Bangladesh (1.9%); Haiti (7.4%).

2010: Kosovo (3%); Bangladesh (1.1%); DR Congo (12.3%); Russia (14.1%); Sri Lanka (20.4%); PR China (9.6%); Guinea (16.3%); Haiti (9.7%); Armenia (5%); Turkey (6.1%).

2011: Bangladesh (1.2%); DR Congo (11.7%); Armenia (3.3%); Sri Lanka (11%); Russia (12.5%); PR China (7.5%); Haiti (6.3%); Kosovo (3%); Guinea (19.5%), Turkey (4.4%);

2012: DR Congo (8.5%); Russia (10.5%); Sri Lanka (6.2%); Kosovo (2.9%); PR China (15%); Pakistan (1.6%); Turkey (4.4%); Georgia (2%); Albania (3.8%); Armenia (5.3%).

2013: DR Congo (14.1%); Kosovo (2.5%); Albania (4.1%); Bangladesh (3.1%); Russia (18.1%); PR China (12.8%); Guinea (19%); Sri Lanka (15.7%); Georgia (3.2%); Pakistan (3.4%).

2014: DR Congo (10.1%); PR China (23.6%); Bangladesh (5.5%); Russia (16.6%); Syria (96.7); Pakistan (6.9%); Albania (9%); Sudan (13.3%); Haiti (1.6%); Guinea (23.8%).

## Annex 4 Hypothetical/future scenarios of mass influx in the EU

### Introduction

In line with the study specifications, the study team developed two hypothetical scenarios for mass influx to the EU. These were developed in the Spring of 2015 and include i) a sudden (and unanticipated) mass influx of Ukrainians to Poland and other EU MS and ii) a sudden mass influx of Syrians to Cyprus.

### Sudden mass influx of Ukrainian displaced persons

#### Hypothetical/Future Context

Ukraine has witnessed a new escalation in the conflict against pro-Russian separatists who have moved attacks in the Donetsk region. This sudden uptick in fighting is threatening to reignite a wider war throughout eastern Ukraine. The number of internally displaced persons (IDPs) has exceed 1.3 million in April 2015, while over 860,000 refugees have fled to neighbouring countries,<sup>230</sup> the majority of which seeking asylum in Russia.

Figure 36. Hypothetical scenario Ukraine

## Ukraine crisis

Despite the February truce, shooting has continued near the ceasefire line in Ukraine. Russia denies providing any troops or arms to support the rebellion and accuses Kiev of violating the ceasefire.

#### KEY:

##### Ceasefire withdrawal zones

(Heavy arms were cleared at these distances\* from the ceasefire line)

- 50 km - For artillery systems of 100mm caliber or more
- 70 km - For multiple rocket launcher systems
- 140 km - For tactical missile systems

##### Separatists' area of control as of May 14

- ★ Recent flashpoint\*\*
- ◆ Russian military presence\*\*

##### Border control

- Rebels
- Ukraine

##### Check-points control

- Russian separatists
- Ukrainian forces



Source: National Security and Defense Council of Ukraine. \*Refers to radius. \*\*Locations marked are approximate

C. Inton; G. Cabrera, 14/05/2015

REUTERS

<sup>230</sup> [http://ec.europa.eu/echo/files/aid/countries/factsheets/ukraine\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/ukraine_en.pdf)

Source National Security and Defence Council of Ukraine/Reuters

According to Eurostat, among the 30 main groups of citizenship of asylum applicants in the EU-28 in 2014, by far the largest relative increase compared to 2013 was recorded for individuals from Ukraine. In absolute terms, the overall amount of applications lodged by Ukrainian nationals was reported at around 14,000, with Poland being the Member State with the highest share (2,250).<sup>231</sup>

The enduring conflict may generate larger flows of displaced persons in search of protection in the EU territory. In total, the number of applicants for international protection holding Ukrainian citizenship may significantly increase in a short period of time. Some Member States asylum systems would be under particular pressure due to their geographic proximity to the Eastern land borders route (i.e. Romania, Hungary, Slovak Republic, Poland, Lithuania, Latvia, Estonia and Finland). Some of them would face serious challenges in coping with the high influx of displaced persons; their reception facilities would be overcrowded and unable to accommodate all. As a result, Poland could request the Commission to activate the temporary protection mechanism as laid down in Directive 2001/55/EC.

#### Identification of mass influx

The Commission, aware and concerned about the situation in Ukraine and the large influx of displaced persons caused by it, examines Poland's request. It carefully reviews whether the high influx of applicants from Ukraine can be considered "a mass influx which risks that the asylum system will be unable to process the influx without adverse effects". After a careful consideration of the criteria presented in Table 9, the Commission establishes that the criteria for mass influx have been fulfilled and puts a proposal forward to the Council requesting the activation of the temporary protection mechanism as laid down in Council Directive 2001/55/EC. The proposal specifies that the temporary protection will apply to displaced persons in the EU who hold Ukrainian citizenship and are unable to return to their country of origin; it proposes that the temporary protection is to take effect on 1<sup>st</sup> December 2014 and it is estimated to apply to approximately 200.000 displaced persons.

Table 9. Commission's examination of the request and proposal put forward to the Council

Criteria for identification of mass influx	Fulfilled?	Comments
Arrival in the community of a large number of displaced persons	<input checked="" type="checkbox"/>	110,000 of displaced persons cross the Ukrainian/Polish border
Specific country or geographical area	<input checked="" type="checkbox"/>	All persons hold the Ukrainian citizenship
Unable to return to their country of origin	<input checked="" type="checkbox"/>	They are not able to return to Ukraine due to the ongoing armed conflict between Ukraine and pro-Russian separatists

<sup>231</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics#Asylum\\_applicants](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Asylum_applicants)

Criteria for identification	Fulfilled?	Comments
mass influx		
The mass influx risks that the asylum system is unable to process the influx without adverse effects	<input checked="" type="checkbox"/>	The risk of adverse effects is present and already evident in several MS e.g. RO, HU, SK and PL whose reception facilities are overcrowded with many applicants not able to be accommodated at all. Their reception capacity has exceeded.

### Triggering of the temporary protection mechanism

The Commission's proposal is subsequently discussed in Council. Whilst the situation in Ukraine and the scale of movement of displaced persons is examined, Member States are also asked to indicate their capacity to receive displaced persons from Ukraine. However, due to a lack of common indicators to measure capacity with, Member States estimate and report on their capacity in different ways. This leads to much disagreement between Member States, thereby significantly stalling the negotiations. Eventually, the Council Decision is adopted by qualified majority at the end of February 2015. It stipulates that temporary protection should be granted from the 1<sup>st</sup> of March 2015 to displaced persons holding citizenship from Ukraine.

### Implementation/Activation of temporary protection in Member States

Following the adoption of the Council Decision, all Member States bound by the Directive (all except Denmark) should introduce temporary protection. Ireland, although in principle bound by the Directive following request for its application, never adopted national legislation giving effect to the Directive. It may thus be wondered whether temporary protection as provided for in the Council's Decision will be granted and in what form (i.e. what rights are granted to beneficiaries of temporary protection in the absence of the transposition of the rights as stipulated in the Directive).

In the Member States bound by the Directive, the activation of temporary protection could, in some Member States, lead to difficulties. For example, the Odysseus Study indicated that Austria, Finland, Malta and Slovenia do not have any provision in their national legislation authorising the Council to introduce temporary protection and that these Member States will instead have to use ad hoc mechanisms, including e.g. an ad hoc governmental decision, resolution, or a ministerial order. The adoption of such ad hoc mechanisms could delay the activation, following which these Member States would risk not respecting the date on which temporary protection is to take effect as stipulated in the Council Decision. Moreover, in the Netherlands, potential beneficiaries of temporary protection would be requested to first lodge an application for international protection in order to benefit from the temporary protection regime. As such, concerned persons are not granted immediate protection but instead have to await a decision on whether or not they will be granted temporary protection and, during that time, do not benefit from the rights granted to beneficiaries of temporary protection.

Once temporary protection is activated in all Member States, the concerned persons will be received by a Member State that indicated to have capacity. The individual will have to consent to be received by a particular Member State. However, this may lead to difficulties following discrepancies in the rights granted to beneficiaries. For instance, as indicated by the Odysseus Study, in some Member States (e.g. Austria and Lithuania)

beneficiaries will not have the right to family reunification, or in others (e.g. Austria, Estonia, Finland, the Netherlands and Sweden) they will not receive information on the status of temporary protection. Moreover, in several Member States (e.g. Czech Republic, Finland, France, Italy, Lithuania, Portugal, Slovak Republic, Slovenia) it will be more likely for beneficiaries to be excluded from protection following an extension of the exclusion grounds in national legislation. Such discrepancies may result in beneficiaries favouring the most “generous” Member States and some may therefore reject to be received by a particular Member State, resulting in an uneven burden across Member States in receiving beneficiaries of temporary protection.

Member States which reception capacity is limited or exceeded may subsequently request for a transfer of residence to those Member States that, during the temporary protection period indicated to have additional capacity. The transferral would again be subject to the beneficiary’s consent. However, beneficiaries may not consent to the transfer due to the discrepancies in rights, or possibly also due to other reasons such as unwillingness to transfer from Member States that host many diaspora from Ukraine (e.g. Italy, Spain, United Kingdom and Germany).

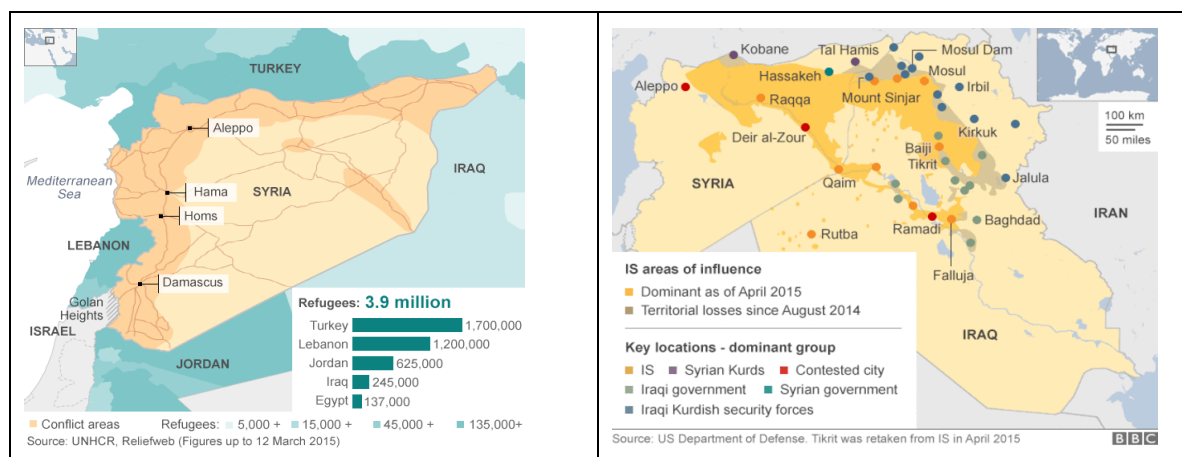
### Sudden and unanticipated mass influx of Syrian displaced persons to Cyprus

#### Hypothetical/future context

Another example of a possible future scenario, where it could be useful to have the temporary protection mechanism activated at EU level, could be a rapid escalation of the conflict in Syria, with the IS troops advancing and occupying the coastal regions, resulting in a consequent mass flow of refugees towards Cyprus.

The rapid advance across Syria and Iraq by militant fighters from Islamic State (IS) in 2014 threw the region into chaos and resulted in many fleeing abroad to escape the war.<sup>232</sup> The figures below show the displacement of Syrian refugees fleeing the conflict zones (either internally or to the neighbouring countries) on the left side<sup>233</sup> and the current areas of influence of IS (including Iraq) on the right side.

Figure 37. Syrian refugees in neighbouring countries and Syria conflict areas



<sup>232</sup> <http://www.bbc.com/news/world-middle-east-27838034>

<sup>233</sup> <http://data.unhcr.org/syrianrefugees/regional.php>

*Source UNCHR and BBC*

It is also reported that an increasing number of Syrians try to reach Europe, although it remains comparatively low, with around 6% of Syrians who have fled the conflict seeking safety in Europe.<sup>234</sup> A flourishing profit-making smuggling market has facilitated the entry of large numbers of displaced persons by land (via Turkey to Greece and Bulgaria) or by sea to Greece or Italy<sup>235</sup>: the choice for the mainland is by far the most sought by asylum seekers, as this could allow easier secondary movements towards more preferred destinations (i.e. Germany or Sweden). Despite the geographical proximity of Cyprus (100km off the coast of Syria), it is still more likely that Syrians would flee via land borders to neighbouring countries and not by sea,<sup>236</sup> as migrants prefer to bypass the island to reach larger European nations. A rescue intervention off the coast of Cyprus in September 2014 confirms this reading,<sup>237</sup> as 300 Syrians refused to be disembarked and demanded to be taken to Italy (allegedly the main destination of their journey).<sup>238</sup>

However, the situation in Syria may quickly evolve and worsen. In the course of its offensives in Iraq and Syria in June 2014, IS gained control of much of the oil infrastructure, which play a vital role in fuelling IS military units and in generating revenue for the group. Some of them, still out of IS' control are located in proximity of the Mediterranean coast. The escalation of the conflict and the sudden IS' advance across in the coastal regions could result in a large flow of displaced persons in search of protection trying to flee the country, by any means and not necessarily according to the most common patterns: it is then conceivable that Syrian refugee boats could head for Cyprus. Instead of heading to Turkey, Lebanon or Jordan (main hosting countries) and without having time to arrange lengthier trips to Turkey, Greece or Italy, some refugees would be forced to attempt to arrive in Cyprus by boats. Groups of facilitators could quickly adapt to the changed scenario and arrange pricy (and maybe risky) journeys for displaced persons to Cyprus.

The number of applicants for international protection holding Syrian citizenship would exponentially increases in a very short period of time, putting the Cypriot asylum system under particular pressure due to its geographic proximity to Syria and isolation from other mainland destinations. The most significant consequences and challenges for the asylum system would relate to the following:

The limited reception capacity (Cyprus authorities reported to have only one asylum reception centre in Kofinou which normally has a capacity of approximately 70-80 beds) would be unable to cope with the sudden influx of displaced persons and quickly overcrowded;

The large and sudden arrival of displaced persons would produce a significant backlog of cases, due also to the Asylum Service not sufficiently staffed to deal with such an

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<sup>234</sup> <http://data.unhcr.org/syrianrefugees/regional.php>

<sup>235</sup> The Turkish port of Marsin has become a hub for illegal immigrants seeking to reach Europe, mainly Italy.

<sup>236</sup> <http://migrantsatsea.org/2012/06/14/cyprus-reportedly-preparing-for-possible-influx-of-syrian-boat-refugees/>

<sup>237</sup> The Syrian refugees were rescued off the coast near the port of Kyrenia in the Turkish Republic of Northern Cyprus, which is not recognised by nor part of the EU.

<sup>238</sup> <http://www.dailymail.co.uk/news/article-2770525/Thanks-rescuing-certain-death-Italy-Hundreds-Syrian-refugees-saved-Cyprus-stage-sit-cruise-liner-demanding-taken-mainland-Europe.html>

increase in applications. This could be detrimental to both the quality of the assessment of asylum applicants and the working conditions of asylum officers;

The government would face a substantial and additional financial burden to allow its system to deal with the humanitarian situation, by hiring more case workers, increasing the reception capacity and guaranteeing access to health and other basic needs.

The recognition rate for these Syrians could be expected to be high, bringing along the question of whether Cyprus could accommodate and integrated all those recognised as refugees or beneficiaries of subsidiary protection.

As a result, Cyprus could decide to request the Commission to activate the temporary protection mechanism as laid down in Directive 2001/55/EC.

### Identification of mass influx

The Commission, aware and concerned about the situation in Syria and the large influx of displaced persons caused by it, examines Cyprus' request. After carefully reviewing whether the high influx of applicants from Syria can be considered "*a mass influx which risks that the asylum system will be unable to process the influx without adverse effects*", the Commission establishes that the criteria have been met and puts a proposal forward to the Council requesting the activation of the temporary protection mechanism as laid down in Council Directive 2001/55/EC. The proposal specifies that the temporary protection will apply to displaced persons in the EU who hold Syrian citizenship and are unable to return to their country of origin; it proposes that the temporary protection is to take effect on 1<sup>st</sup> September 2015 and it is estimated to apply to approximately 20,000 displaced persons.

Table 10. Commission's examination of the request and proposal put forward to the Council

Criteria for mass influx	identification Fulfilled ?	Comments
Arrival in the community of a large number of displaced persons	<input checked="" type="checkbox"/>	20,000 persons in need of international protection are facilitated the arrival to Cyprus
Specific country or geographical area	<input checked="" type="checkbox"/>	All displaced persons hold the Syrian citizenship
Unable to return to their country of origin	<input checked="" type="checkbox"/>	They are not able to return to Syria due to the ongoing war and control taken by the IS troops
There is the risk that the asylum system is unable to process the influx without adverse effects	<input checked="" type="checkbox"/>	Adverse effects can be anticipated due to the low number of case workers and the limited reception capacities.

### Triggering of the temporary protection mechanism

The Commission's proposal is subsequently discussed in Council. Whilst the situation in Syria and the scale of movement of displaced persons is examined, Member States are also asked to indicate their capacity to receive displaced persons. However, due to a lack of common indicators to measure capacity with, Member States estimate and report



on their capacity in different ways: such discrepancies may stall the negotiations. Eventually, the Council Decision is adopted by qualified majority at the end of 2015. It stipulates that temporary protection should be granted from the 1<sup>st</sup> of January 2016 to displaced persons holding Syrian citizenship.

### **Implementation/Activation of temporary protection in Member States**

Following the adoption of the Council Decision, all Member States bound by the Directive (all except Denmark) should introduce temporary protection. Ireland, although in principle bound by the Directive following request for its application, never adopted national legislation giving effect to the Directive. It may thus be wondered whether temporary protection as provided for in the Council's Decision will be granted and in what form (i.e. what rights are granted to beneficiaries of temporary protection in the absence of the transposition of the rights as stipulated in the Directive).

In some of the Member States bound by the Directive, the activation of temporary protection could lead to difficulties. For example, the Odysseus Study indicated that Austria, Finland, Malta and Slovenia do not have any provision in their national legislation authorising the Council to introduce temporary protection and that these Member States will instead have to use ad hoc mechanisms, including e.g. an ad hoc governmental decision, resolution, or a ministerial order: the adoption of such ad hoc mechanisms could delay the activation of the temporary protection. As to the Netherlands, persons eligible to temporary protection would be requested to first lodge an application for international protection in order to benefit from the temporary protection regime. Concerned persons would have to await a decision on whether or not they will be granted temporary protection and, during that time, not benefit from the rights granted to beneficiaries of temporary protection.

Once temporary protection is activated in all Member States, the concerned persons will be received by a Member State that indicated to have capacity. The individual will have to consent to be received by a particular Member State. However, this may lead to difficulties following discrepancies in the rights granted to beneficiaries. For instance, as indicated by the Odysseus Study, in some Member States (e.g. Austria and Lithuania) beneficiaries will not have the right to family reunification, or in others (e.g. Austria, Estonia, Finland, the Netherlands and Sweden) they will not receive information on the status of temporary protection. Moreover, in several Member States (e.g. Czech Republic, Finland, France, Italy, Lithuania, Portugal, Slovak Republic, Slovenia) it will be more likely for beneficiaries to be excluded from protection following an extension of the exclusion grounds in national legislation. Such discrepancies may result in beneficiaries favouring the most "generous" Member States and some may therefore reject to be received by a particular Member State, resulting in an uneven burden across Member States in receiving beneficiaries of temporary protection.

Member States where reception capacity is limited or exceeded may subsequently request for a transfer of residence to those Member States that, during the temporary protection period indicated to have additional capacity. The transferral would again be subject to the beneficiary's consent. However, beneficiaries may not consent to the transfer due to the discrepancies in rights, or possibly also due to other reasons such as unwillingness to transfer from Member States that host many diaspora from Syria (e.g. Germany or Sweden).

### **Consequences of the activation of the TPD**

As elaborated in the sections above obstacles are inherent to the criteria to be met in order to enable the Directive's mechanism to be triggered (lack of clear indicators leading to the identification/definition of mass influx) or the procedure that must be followed for the triggering of the mechanism (a series of formal steps at MS and / or COM and eventually Council level). The activation of the mechanism may thus result lengthy and fail to guarantee the "immediate" protection of concerned third-country nationals.

Should however a decision be (rather quickly) taken, the consequence of the activation of the TPD could differ according to the different geographical position and response capacity of Poland and Cyprus: the latter in particular could still witness difficulties in dealing with the high number of applicants due to its relatively low number of case workers or in accommodating them due to the limited reception capacity. The geographical isolation would represent an extra obstacle as compared to the Polish case, for which a quicker cooperation and transfer of displaced persons could be possibly arranged with neighbouring Member States (provided they would not be experience a pressure on the system themselves).

Depending on the volume of the arrivals, access to the asylum procedures fully in line with the Recast Reception Conditions Directive may be difficult to guarantee. In absence of reliable data indicating Member States' reception capacity, the distribution of persons eligible for temporary protection could result problematic. As result, Cyprus (and to a lesser extent Poland) could still be confronted with a disproportionate presence of applicants for a certain amount of time which the TPD would only be partly able to address.

Complementary measures could prove beneficial to both cases. The provision of emergency assistance under the Asylum, Migration and Integration Fund (AMIF) could alleviate the financial burden on the national system, allow to hire more case workers and support the provision of temporary shelter, every day basic needs and medical care.<sup>239</sup> EASO Special Support could also reinforce and enhance specific areas in the asylum and reception systems and provide support concerning age assessment, screening for special needs, decision-making on international protection and data collection.

However, while all measures described above, including the activation of temporary protection would ease the pressure on the asylum system and guarantee protection to displaced persons, their effectiveness would still depend on the volume of displaced persons physically present in both countries, the duration of their stay (and of the procedures related to their applications), the overall capacity (staff and accommodation) of the asylum system to cope with such emergency and the likelihood to transfer people to other Member States. As result, Cyprus and Poland could still face serious challenges in absence of a quicker and fair relocation and solidarity-sharing system among Member States.

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<sup>239</sup> The European Commission has already awarded an amount of €0.98 million in emergency funding to support the temporary reception of the almost 400 Syrians rescued in September 2014, while EASO support would follow-up on the technical and operational support granted in 2014 for about one year.



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