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EMN Annual Policy Reports provide an overall insight into the most significant political and legislative (including EU) developments, as well as public debates in the area of migration and asylum. This is the fourth in a series of such reports, this time covering the period 1st January 2007 to 31st December 2007.

EMN National Contact Points (NCPs) from **Austria, Belgium, Estonia, Germany, Ireland, Italy, Latvia, Netherlands, Portugal, Romania, Spain, Sweden** and the **United Kingdom**, have each produced a National Report detailing developments in their Member State, which then forms the basis of this Synthesis Report. The aim of the Synthesis Report is to summarise and compare the findings, in order to provide a useful overview to policymakers.

The EMN NCP National Reports upon which this Synthesis Report is based may be obtained directly from the EMN NCPs concerned themselves or by contacting Stephen DAVIES (Stephen.Davies@ec.europa.eu).

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Disclaimer

This Report has been produced by the European Migration Network (EMN), and was completed by the European Commission, in co-operation with the thirteen EMN National Contact Points participating in this activity. This report does not necessarily reflect the opinions and views of the European Commission, or of the EMN National Contact Points, nor are they bound by its conclusions.

Explanatory Note

The thirteen EMN National Contact Points who participated in this activity were from **Austria, Belgium, Estonia, Germany, Ireland, Italy, Latvia, Netherlands, Portugal, Romania, Spain, Sweden** and the **United Kingdom**. Therefore, reference to "Member States" in this report is specifically only for these Member States.

Executive Summary

This EMN Synthesis Report provides an overall insight into the most significant political and legislative (including EU) developments, as well as public debates in the area of migration and asylum, in **Austria, Belgium, Estonia, Germany, Ireland, Italy, Latvia, Netherlands, Portugal, Romania, Spain, Sweden** and the **United Kingdom** for the period 1st January 2007 to 31st December 2007. The report has been produced on the basis of National Reports from each National Contact Point of the European Migration Network (EMN) in these Member States, except for **Italy** and the **United Kingdom** who contributed directly to this report.

As outlined in the Methodology ([Section 1.1](#)), in order to facilitate comparability between the findings from the Member States, the common specifications also had the same approach with regard to what was considered to be a "*significant development/debate*", namely that this was an event which had been discussed in the national parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development. Similarly, if such developments/debates then led to any proposals for amended or new legislation, this too was considered to be significant. Particular attention was also given to developments which would be of relevance to policymakers.

Germany and **Portugal** respectively held the Presidency of the EU during 2007 ([Section 2.2](#)), with progress being made in the context of border control; the enlargement of the Schengen Area; integration; and dialogue and agreements with third countries, such as the EU-Africa summit which resulted in a partnership dedicated to Migration, Mobility and Employment. **Belgium** hosted the first Global Forum on Migration and Development. New governments, following national elections ([Section 2.3](#)) in **Austria, Belgium, Ireland** and **Latvia**, were formed, as well as in the **Netherlands**. In some cases, Action Plans, including for the development of asylum and migration policy, in particular in the context of integration, were subsequently published. There were several national policy and legislative developments ([Section 2.4](#)) again concerning integration, plus also the transposition of EU legislation which was, in many cases, done in conjunction with additional national amendments or provisions; publication of draft Bills and national Strategies and/or entry into force of new legislation; and economic migration. Several new entities and/or Ministerial portfolios ([Section 2.5](#)) addressing different facets of asylum, migration and/or integration, complementing the political and legislative developments, were also created.

All Member States report, to varying degrees, on significant developments within specific areas of asylum and migration. In the *Control and Monitoring of Immigration* ([Section 3.1](#)), the enlargement of the Schengen Area, including access to the SISone4all information system, was naturally of much relevance to **Estonia** and **Latvia**. The development of information technology systems was reported by **Ireland, Netherlands, Portugal, and United Kingdom**. Developments in *Refugee Protection and Asylum* ([Section 3.2](#)) were particularly prominent for **Austria, Netherlands** and **Sweden**, and, for the latter two along with **Ireland** and **Spain**, *Unaccompanied Minors* also ([Section 3.3](#)). *Economic Migration* ([Section 3.4](#)) mainly concerned the opening up of specific sectors to specific type(s) of workers, for example, to address the need for providing care for the elderly in **Italy** and the introduction of the **United Kingdom's** Points-Based System. *Family Reunification* ([Section 3.5](#)) included, sometimes in connection to the transposition of Directive 2003/86/EC, the apparent discrimination of nationals compared to other EU and third country nationals; increases in the minimum age to counter forced marriages; and changes to the scope of family members. Several Member States report on the adoption of obligatory *Integration* ([Section 3.6](#)) measures for migrants

and/or the development of national plans for the integration of migrants, the latter often including an extensive public consultation phase. Legislation with regard to *Citizenship and Naturalisation* ([Section 3.7](#)), in some cases defining pre-conditions which had to be met (e.g. language competence), was adopted or entered into force in **Austria**, **Germany**, **Portugal** and **Spain**. In **Austria** this seems to have resulted in a decrease in the number of applications for naturalisation, whilst for **Portugal** a significant increase occurred.

There were many developments in addressing *Illegal Immigration* ([Section 3.8](#)). **Austria** recorded a decrease in illegal entry attributed to **Romania's** accession to the EU, and in **Belgium**, the detention of an Ecuadorian mother and daughter who were illegally-resident, attracted a lot of (media) attention. Following a brutal murder in **Italy**, a proposal was made to introduce more strict norms for EU nationals residing for more than three months without employment, the **Netherlands** realised a pardon scheme for asylum applicants, **Spain** created new entities and developed partnerships with third countries and the **United Kingdom** introduced legislation to impose fines on employers of third country nationals working illegally. Similarly, *Actions against Human Trafficking* ([Section 3.9](#)) had **Austria**, **Ireland**, **Portugal** and the **United Kingdom** develop their Action Plans and **Italy** creating an Observatory on Prostitution. The **Netherlands** reported on joint operations with other Member States and, also for **Sweden**, on modifying the criteria for granting a residence permit to those who co-operate with the authorities. On *Return Migration* ([Section 3.10](#)), there is increasing emphasis on promoting (Assisted) Voluntary Return, often including (financial) support for re-integration, and **Spain** and **Sweden** concluded bilateral re-admission agreements with specific third countries. **Austria** and the **United Kingdom** introduced a scheme for the removal of (third country national) convicted criminals.

Finally, an overview of *EU Asylum and Immigration Legislation* ([Section 4](#)) adopted and proposed in 2007, along with experience in the implementation and developments in the transposition of relevant EU legislation, is given. The **Netherlands** requested the European Court of Justice to clarify the interpretation of Article 15c of Directive 2004/83/EC (Qualification Directive). Related to this, **Germany** observes that a uniform procedure to recognise refugee status and subsidiary protection would be advisable. Challenges to Dublin Transfers were lodged in the **United Kingdom**. An overview of the equivalent national laws ([Table 1](#)) gives the status of transposition during 2007 as reported by the Member States.

1. INTRODUCTION

EMN Annual Policy Reports provide an insight into the most significant political and legislative (including EU) developments, as well as public debates in the area of migration and asylum. This is the fourth in a series of such reports, this time covering the period 1st January 2007 to 31st December 2007. EMN National Contact Points (NCPs) from **Austria, Belgium, Estonia, Germany, Ireland, Italy, Latvia, Netherlands, Portugal, Romania, Spain** and **Sweden** have each produced a National Report detailing developments in their Member State, which then forms the basis of this Synthesis Report. Statistics are also included in these National Reports and, in the case of **Austria** and **Ireland** include also an Annex with extensive statistical data. For **Italy** and the **United Kingdom**, their contribution was made directly into this report. The aim of the Synthesis Report is to summarise and compare the findings, in order to provide a useful overview for policymakers.

Like for previous versions of the Annual Policy Reports, participation by an EMN National Contact Point was on a voluntary basis. However, following adoption of [Council Decision 2008/381/EC](#)¹ establishing a legal basis for the EMN in May 2008, future reports of this kind will include contributions from 26 Member States, plus possibly Denmark as well.

Note that comments in this report refer to the situation in the above-mentioned Member States and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available [National Report\(s\)](#),² and one is strongly recommended to consult them also, and/or via the hyperlinks provided in the text and footnotes.

1.1 Methodology

Each National Report was produced following common specifications, developed by the EMN, in order to facilitate comparability between the findings from the Member States. In this respect, the same common approach was followed with regard to what was considered to be a "*significant development/debate*", namely that this was an event which had been discussed in the national parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development. Similarly, if such developments/debates then led to any proposals for amended or new legislation, this too was

¹ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0381:EN:NOT>.

² Currently available from <http://emn.sarenet.es> under "EMN Reports".

considered to be significant. Particular attention was also given to developments which would be of relevance to policymakers. The Annex of each National Report details more the specific methodology followed by each Member State, giving also any further refinements of the common approach outlined above.

Various sources of information were used and analysed in order to produce a National Report, including from the applicable legislation related to asylum and migration, contributions from public administrators (legal and managerial experts), published proceedings of parliamentary debates, Ministry Press Releases, news media (including internet), official documents published in, for example, official gazettes, and case law reporting.

Rather than producing a National Report, **Italy** and the **United Kingdom** contributed directly to this Synthesis Report. In the case of the **United Kingdom**, input was obtained through comments from policy colleagues on a draft version of the Synthesis Report and by reviewing relevant policy documents covering the period 2007.

2. POLITICAL; POLICY AND LEGISLATIVE; AND INSTITUTIONAL DEVELOPMENTS

In this Section, the most significant political, policy and legislative and institutional developments that have occurred in 2007 are outlined in order to provide the context for the developments in specific areas of asylum and migration which follow. Consequently, not all Member States may be mentioned in each sub-section, given this purpose of highlighting only the most significant developments. Details of the general structure of the political system in each Member State may be found in the National Reports, along with the main (governmental) institutions responsible for asylum, migration and integration related issues.³

2.1 Global Forum on Migration and Development

Belgium organised and hosted the first [Global Forum on Migration and Development](#)⁴ in July 2007. The Forum was opened by Ban KI MOON (UN Secretary – General) and José Manuel BAROSSO, President of the European Commission. Three thematic roundtables were organised: human capital development and labour mobility; remittances and other diaspora

³ The EMN Study on "*The Organisation of Asylum and Migration Policies in the EU Member States*" will also provide this information, updated on a regular basis. For the **United Kingdom**, this information may be found in their National Report for the Annual Policy Report 2006.

⁴ Further information available at <http://www.gfmd-fmmd.org/>.

resources; and enhancing institutional and policy coherence and promoting partnerships. These were further elaborated on in the context of three horizontal themes: the aspect of gender; the rights of migrants; and the basic causes of migration.

2.2 Presidency of the European Union

Germany held the Presidency from 1st January to 30th June 2007, addressing in its operational programme *inter alia* measures to increase security, manage migration and promote integration. The Presidency supported the European Commission in establishing the Visa Information System (VIS) and in promoting a strengthened role for FRONTEX, including establishing Rapid Border Intervention Teams (RABITs) of expert border police to provide support where it is needed to a Member State subject to a particular burden from illegal immigration. In addition, a concrete package of measures was adopted to intensify co-operation with Eastern and South-Eastern neighbouring regions of Europe, including support of negotiations on readmission agreements with the Western Balkan states, which were concluded in September 2007. The establishment of the Schengen Information System (SIS) II, set the stage for the removal of border controls between EU-10 and EU-15 Member States, which occurred on 21st December 2007. In the framework of integration, the promotion of intercultural dialogue – above all the exchange on integration policy initiatives between the Member States – formed the focus. A meeting took place in Berlin on 20th June 2007 between the Presidency and the representatives of the major Churches and religious communities in Europe.

The Presidency of the European Union in the second semester of 2007 was held by **Portugal**, and immigration continued to be a priority in the agenda, specifically in the development of an “European immigration policy based on fighting illegal immigration, within a policy for inclusion and integration of legal immigrants and an effective cooperation with the countries of origin capable of, through mutual benefits, regulate migratory flows”.⁵ The Presidency also highlighted the need to think about creating a European policy with actions that focus on the origin and destiny, as well as on the causes and effects of immigration. In this context, the [EU-Africa Summit](#),⁶ which happened between 7th and 9th December 2007 in Lisbon, is

⁵ Presentation of the Programme for the Portuguese EU Presidency to the European Parliament, see: http://www.portugal.gov.pt/Portal/PT/Primeiro_Ministro/Intervencoes/20070711_PM_Int_PPUE_PE.htm.

⁶ European Commission. EU-Africa Summit 2007, see http://ec.europa.eu/development/services/events/eu-africa-summit-2007/index_pt.cfm.

significant, as it resulted, among other priorities, in the plan to develop, until 2010, a partnership dedicated to “[Migration, Mobility and Employment](#)”.⁷

2.3 Outcome of National Elections

The outcome of national elections, which occurred for some Member States and which had an impact on asylum and migration policy, are outlined here.

Following parliamentary elections in **Austria** in October 2006, the formation of the new government, a “grand coalition” between the *Social Democratic Party of Austria (SPOE)* and the *Austrian People’s Party (OeVP)*, was announced on 8th January 2007. The Government Programme 2007-2010 ([Bundeskanzleramt 2007](#)⁸) addresses migration and asylum related topics, such as illegal immigration, admission and integration, with emphasis once again on the guiding principle of Austria’s immigration policy since the 1990s being “integration before new immigration.”

Legislative federal elections took place in **Belgium** on 10th June 2007. The CD&V / N-VA (Flemish Christian-Democrats in alliance with Flemish nationalists) became the largest political formation in Belgium, thus leading the coalition talks for a new government. However, due to diverging views concerning the constitutional reform, no agreement could be reached between the different parties and as a last resort an interim government led by the previous incumbent Guy VERHOFSTADT of Open VLD (Flemish Liberals) was installed on 21st December 2007. There was a provisional agreement on migration and asylum, but in the end no overall policy agreement could be reached. The main elements of this provisional agreement were: a new Minister solely responsible for Migration and Asylum policies; a change in regularisation criteria; the introduction of a resettlement scheme; and the possibility of economic migration to fill ‘bottleneck vacancies’. During the election campaign certain expectations were raised about new regularisation measures and the broadening of the possibilities for labour migration, also for illegally-resident migrants already present in Belgium. In the absence of a definitive government, 2007 ended without concrete actions or decisions on the migration and asylum issue at national level. However, the provisional agreement was used as the basis for further negotiation in 2008.

⁷ Africa-EU partnership on Migration, Mobility and Employment, see http://ec.europa.eu/development/icenter/repository/EAS2007_action_plan_migration_pt.pdf#zoom=100.

⁸ See <http://www.bundeskanzleramt.at/DocView.axd?CobId=19542>.

National elections of the Riigikogu took place in **Estonia** in March 2007, with a new government coalition formed by three parties: *Estonian Reform Party*, *Union of the Pro Patria and Res Publica* and the *Estonian Social Democratic Party*, with an unchanged Prime Minister (Andrus ANSIP) One of the first tasks of the Government was to approve the [Action Plan for 2007-2011](#)⁹, including, as part of the policy towards ethnic minorities, (financial) support for learning the Estonian language, as well as joining the common Schengen visa area on 21st December 2007.

A national general election also took place in **Ireland** in May 2007, with the largest party in the previous coalition, *Fianna Fail*, continuing in power, in coalition with the *Green Party*, the *Progressive Democrats* and four Independent T.D.s (Members of Parliament). As well as the appointment of a new Minister for Justice, Equality and Law Reform, (Brian Lenihan T.D.), a new Minister of State with special responsibility for Integration Policy was also created. This junior ministry is based across three departments: the Department of Community, Rural and Gaeltacht Affairs; the Department of Education and Science; and the Department of Justice, Equality and Law Reform. An [Agreed Programme for Government](#)¹⁰ was published in June 2007, setting out a 'shared vision' for 2007 to 2012, with, in the area of asylum, immigration and integration, a focus on further significant multi-agency action.

In **Latvia**, there were two significant political changes: the re-election of the President and the resignation of government. The new [government](#)¹¹ is now composed of a right-wing centred coalition of four parties - *People's Party (Tautas partijas)*, *The Union of Latvian Greens and Farmers Party (Zaļo un Zemnieku savienības)*, *First Party of Latvia/Latvia's Way (Latvijas Pirmās partijas/Latvijas Ceļa)* and *For the Fatherland and Freedom/Latvian National Independence Movement (Tēvzemei un brīvībai/LNNK)*.

2.4 National Policy and Legislative Developments

The previously mentioned Government Programme 2007-2010 in **Austria** laid the foundations for the establishment of the so-called Integration Platform ([Integrationsplattform](#)¹²), which was finally launched by the Austrian Government on 15th

⁹ See www.valitsus.ee/?id=6902

¹⁰ Available from <http://www.taoiseach.gov.ie/index.asp?docID=794>.

¹¹ The Declaration on the planned actions of new government is available at www.mk.gov.lv/lv/mk/darbibu-reglamentejosie-dokumenti/deklaracija/.

¹² Further information available at <http://www.integration.at/>.

October 2007. The aim of the platform is to gather suggestions and reports from experts, respective associations and organisations, as well as views of the Austrian population, in order to develop new integration policies and strategies. An Integration Report “*Gemeinsam kommen wir zusammen*” (“Together, we will find our way”) was published on 22nd January 2008. The aim is for this report to be used by the Minister of Interior in presenting a concrete package of measures concerning integration policies to the Council of Ministers during 2008.

An amendment of the Aliens Act in **Belgium** entered into force on 1st June 2007. A further amendment, also called “Mammoth II”, was adopted on 25th April 2007, for entry into force on 1st June 2008, and primarily transposed two Directives: long-term resident status (2003/109/EC) and the right to free movement (2004/38/EC). In addition, the new [Asylum Seekers and Certain other Categories of Aliens Act](#)¹³ of 12th January 2007 entered into force on 7th May 2007. For the first time, clear rules on the reception of asylum applicants were compiled into one single act. The two main changes were: the provision of material support during the entire asylum procedure (in the past, asylum applicants could apply for financial support from social welfare centres); and the reduction of the period of stay in a reception centre. Reception is now provided in two stages, instead of being referred either to a collective reception centre or to an individual reception structure, asylum applicants initially stay for four months in an open reception structure before moving to an individual reception structure, such as private housing.

Important legal developments were observed in **Germany** in the course of the reform of the [Immigration Act](#)¹⁴, which entered into force on 1st January 2005. With the *Directive Transposition Act*, which entered into force on 28th August 2007, in addition to the transposition of eleven European Union directives on residence and asylum into domestic law, knowledge from the evaluation of the Immigration Act was also taken into consideration, as well as account taken of security-related aspects. The required transposition of the directives primarily related to the Residence Act, to the Residence Ordinance, the Freedom of Movement Act/EU, as well as to the Asylum Procedure Act (the so-called Qualification and the Procedures Directives). The law on residence was additionally amended in some parts over and above the requirements of EU directives.

¹³ See http://www.fedasil.be/home/nieuws_detail/i/12150/.

¹⁴ See <http://www.auswaertiges-amt.de/diplo/en/WillkommeninD/EinreiseUndAufenthalt/Zuwanderungsrecht.html>.

In April 2007, **Ireland** published its draft *Immigration, Residence and Protection Bill*, setting forth a legislative framework for the management of migration to Ireland. Seeking to codify, integrate and update various pieces of previous legislative measures, for the first time in Irish legislation, the Bill explicitly mentioned and defined the concept of a ‘foreign national’ as a third-country national. The Bill also laid down principles governing the lawful presence of non-EU nationals in the State. Statutory processes within the Bill included applying for a visa; entry to the State; residence in the State (a long-term residence category being introduced) and, for the first time, an obligation on a foreign national who is unlawfully in the State to leave. An [Information Leaflet](#)¹⁵ was produced by a number of NGOs in September 2007 summarising their key recommendations in response to this Bill. With the general election and subsequent change of government, however, the Bill fell, although a slightly [amended version](#)¹⁶ was re-launched in January 2008. Other legislative developments included the entry into force of the [Employment Permits Act 2006](#)¹⁷ and the publication in October 2007 of the [Criminal Law \(Human Trafficking\) Bill](#).¹⁸

In April 2007, the government of **Italy** approved a draft law reforming the [Migration Law 189/2002](#).¹⁹ The draft seeks to introduce, among other aspects, improvements in the work entry procedures and to rationalise the operation of detention centres by implementing the proposals submitted by the so called [De Mistura Commission](#),²⁰ which conducted an investigation of practices throughout the country.

Migration policy developments in **Latvia** continued to be primarily for employment purposes, specifically as part of the efforts to address labour shortages. [Measures](#)²¹ to implement and execute the requirements of the Schengen Agreement, following accession to the Schengen acquis on 21st December 2007, also took place. The [Inter-institutional Working Group](#),²² previously reported in 2006, met resistance in its objective to facilitate the entry of third country nationals, both from Ministers in the newly elected government and the wider public. For the former, they considered that such a short-term solution would, in the long-term, cause

¹⁵ Available at <http://www.irishrefugeecouncil.ie/pub07/residence.pdf>.

¹⁶ Details available at <http://www.justice.ie/en/JELR/Pages/Launch%20of%20new%20Immigration%20Bill>.

¹⁷ Available from <http://www.entemp.ie/publications/labour/2006/emppermitsact2006.pdf>.

¹⁸ Details given at http://www.justice.ie/en/JELR/Pages/Human_Trafficking_Bill_Published.

¹⁹ Available at <http://tinyurl.com/cjmx4b>.

²⁰ See http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/notizia_23602.html.

²¹ Details given at www.mk.gov.lv/lv/mk/darbibu-reglamentejosie-dokumenti/deklaracija/.

²² See Annual Policy Report 2006 and www.pmlp.gov.lv/?p=70&news_id=1111&news_pos=0&menu_id=70.

unwanted social, ethnic and economical consequences and that actions should first concentrate on unused labour resources from those districts where the level of unemployment is still high, and on measures to encourage the return of Latvian nationals to Latvia. A programme to implement this approach has started to be developed by the newly-elected government. For the latter, public opinion surveys²³ show a negative attitude towards the entry of guest workers to the labour market. The lack of knowledge of the Latvian language was another concern highlighted.

Following the elections in the **Netherlands** in November 2006, a new government was established on 22nd February 2007. Although the Balkenende IV cabinet has not made a radical break with previous policy, there were important differences in emphasis, the main elements being: (i) a pardon scheme for a certain category of asylum seekers who have exhausted all legal remedies (see [Section 3.8](#)); (ii) separating the portfolios for aliens policy and integration (see [Section 2.5](#)); and the announcement of a Delta Plan for Civic Integration (see [Section 3.6](#)). Many of the proposals in migration policy were, however, mainly a continuation of the changes initiated by the previous Cabinet, with no reversal of any important policy changes. Criticism of government policy in 2007 came mainly from the right wing of the political spectrum.

The central event in **Portugal** was the adoption by Parliament with a large majority of [Law No. 23/2007](#)²⁴ which regulates the regime of the entry, stay, exit and removal of foreigners from national territory. This was preceded by an extensive national debate at both social and political level. As well as transposing a number of EU Directives (see [Section 4](#)), the new law had strategic objectives in (a) simplifying bureaucracy, namely via the introduction of uniform residence documents; (b) stimulating legal immigration, defining new rules for the admission of workers, for family reunification and to attract qualified/seasonal immigration; and (c) reinforcing measures to combat illegal immigration, primarily through sanctions for the exploitation of illegally-staying immigrants and the criminalisation of marriages of convenience.

²³ See, for example, www.integracija.gov.lv/doc_upl/atskaite_integracija_2_07.doc (November 2007) and, with regard to language, www.providus.lv.

²⁴ Commonly known as the immigration law or foreigners' law, available from http://www.portugal.gov.pt/NR/rdonlyres/0C409C59-C2A8-4867-9E04-A0CC24580E7A/0/Lei_Imigracao.pdf.

The government of **Romania** adopted its [National Immigration Strategy 2007 – 2010](#),²⁵ whose aim is to make the management of immigration more efficient, and fully in line with EU policies, and to set the guidelines for concrete activities in this area. Priorities within this strategy include managed/controlled migration; prevention and combating illegal immigration; Asylum; and the social integration of migrants.

Developments in **Spain** were characterised by a period of stability and consolidation. The political approach of the Spanish government since 2004 follows three basic lines of action: reinforcing the fight against illegal immigration; consolidating the link between immigration and the labour market; and promoting a strategy of integration for immigrants. Within the realm of the fight against illegal immigration, Spain has actively promoted a pro-active European border control policy, particularly regarding the Canary Islands' sea borders and a closer co-operation with third countries of origin and transit. In terms of political actions, these included, in the context of integration, the drawing up of a [Strategic Plan on Citizenship and Integration 2007-2010](#)²⁶ and the distribution of a National Integration Fund among regional and local authorities to promote pro-active integration policies.

During 2007, the main policy and legal debates in **Sweden**, at both political level and with the wider public, dealt with emerging precedents and other decisions in the application of the new [Aliens Act](#)²⁷ (which entered into force on 31st March 2006) and their impact on the number of Iraqi asylum applicants coming to Sweden. There was also extensive public debate concerning precedents in which the Migration Court of Appeal gave guidance on the Aliens Act, Chapter 4, Section 2, regarding persons otherwise in need of protection. Other issues which attracted much discussion included the increased numbers of unaccompanied minors (with roughly 50% being Iraqi children) and a political and public debate concerning the conditions of reception in Sweden and the fact that some Swedish municipalities declined to accommodate asylum applicants.

In the **United Kingdom**, the most important legislative development was the [UK Borders Act](#),²⁸ which was adopted on 30th October 2007. The Act implemented aspects of the Government's 2005 *Five-Year Plan for Immigration and Asylum*, described in the previous

²⁵ See <http://www.eurofound.europa.eu/eiro/2007/12/articles/ro0712039i.htm>.

²⁶ See <http://www.mtas.es/es/migraciones/Integracion/PlanEstrategico/Docs/PEClingles.pdf>.

²⁷ See <http://www.sweden.gov.se/sb/d/5805/a/66122>.

²⁸ Available from http://www.opsi.gov.uk/acts/acts2007/ukpga_20070030_en_1.

Annual Policy Report 2006, such as the Points-Based System and an increased use of biometrics and other technology. The Act's main provisions were to give immigration officers police-like powers, both at ports in England, Wales and Northern Ireland to help in police operations, and in relation to asylum support offences. It also provided for automatic consideration for the removal of foreign nationals convicted of serious crimes, with limited rights of appeal and increased powers of detention.²⁹ At the end of 2007, it was announced that the Government would publish a draft Bill on citizenship and immigration in the following year. The purpose of the Bill would be to simplify immigration law, replacing earlier Immigration Acts with one clear, transparent piece of legislation. A [consultation exercise](#)³⁰ showed clear support for the simplification principles outlined in the proposal.

2.5 Institutional Developments

A new *Asylum Court* (adopted by the parliament on 5th December 2007) was introduced in **Austria** into its institutional system. The aims being to accelerate the procedure of asylum applications and the granting of legal protection to asylum applicants. It is composed of one president, one vice-president and other required members, with decisions taken by a single judge or a panel of two judges in order to provide fairness and equality to each case. Because the judges serving in the Asylum Court are not required to be of a qualification necessary to serve on the High Administration or Constitutional Courts, criticism of the deficient legal protection was made, also because legal remedy to the Federal Administrative Court (VwGH) is no longer possible. Provisions regarding questions of fundamental issues, stipulating that such questions has to be submitted to the VwGH, were also criticised, including by the Minister of Justice, especially because the asylum applicant has no right to request a decision of fundamental issues.

In **Belgium**, a proposal was made to assign a Minister solely responsible for Migration and Asylum Policies. It appeared in the provisional agreement on migration and asylum during the negotiations on the formation of the new government. Previously, migration and asylum issues fell under the responsibility of the Minister of Interior. Owing to the aforementioned difficulties encountered in the formation of a new government, Minister Annemie TURTELBOOM (Open VLD) could only take up office in 2008.

²⁹ See <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/ukbordersact>.

³⁰ See <http://www.bia.homeoffice.gov.uk/managingborders/simplifying>.

In **Germany**, the *Co-ordination Council of Muslims (KRM)*, an umbrella association for Muslim organisations, started its work in April 2007. This association aims to promote dialogue between Muslim associations and the Federal Government, particularly with regard to integration and policy on Islam.³¹

A new *Anti-Human Trafficking Unit* within the *Department of Justice, Equality and Law Reform* was established in **Ireland** to work with governmental and non-governmental agencies in developing, coordinating and implementing the Government's national strategy to address human trafficking in Ireland. The central role of this Unit is to foster, develop and maintain co-operative linkages at the highest policy level with other EU Member States and international organisations and institutions, including the prioritisation of close co-operation with the **United Kingdom** on the issue of trafficking in relation to the common travel area and land border with Northern Ireland.³² **Ireland** also launched a public consultation on what should be included in the *National Action Plan to Prevent and Combat Human Trafficking*, which commenced in October 2007, following the launch in Brussels of a [G6 Initiative](#)³³ against trafficking in human beings. Another development, previously announced in the Annual Policy Report 2006, was the establishment, on an interim basis initially with a view to a statutory basis in 2008, of the [National Employment Rights Authority](#) (NERA).³⁴

A new structural unit was established in **Latvia** under the Ministry of the Interior, namely the [Planning, Coordination and Control Department](#).³⁵ Its objective is to develop the internal policy in the field of public order and security, border guarding, border control and illegal immigration, fire fighting and rescue, citizenship and migration, and to co-ordinate and control its implementation.

With the establishment of the new government in the **Netherlands**, integration policy was taken away from the responsibility of the Ministry of Justice and is now the responsibility of the Programme Minister for [Housing, Neighbourhoods and Integration](#).³⁶ Programme Ministers, who were appointed in 2007 for the first time in Dutch history, have a

³¹ Further information available from http://www.bpb.de/themen/SAKLRT,0,0,Muslime_in_Deutschland.html.

³² Further details available at http://www.irlgov.ie/crimecouncil/human_trafficking.html.

³³ See Press Release at <http://www.homeoffice.gov.uk/documents/g6-joint-declaration-07.pdf?view=Binary>.

³⁴ See <http://www.employmentrights.ie>.

³⁵ Regulations are given at www.iem.gov.lv/images/modules/items/reglamentu/PKKD%20reglaments%2007.pdf.

³⁶ See <http://www2.vrom.nl/pagina.html?id=7336>.

responsibility for policy areas that extend across several Ministries. The budgets and the service units of the different Ministries involved in integration policy are component parts of the Housing, Communities and Integration programme under the direct responsibility of the Minister for Housing, Communities and Integration. The programme itself is part of the Ministry of Housing, Spatial Planning and the Environment (*Volkshuisvesting, Ruimtelijke Ordening en Milieu (VROM)*). Other significant institutional changes that were realised were the establishment of the [Repatriation & Departure Service](#) (DT&V),³⁷ which became operational on 1st January 2007, and the gradual takeover by the [Immigration and Naturalisation Service](#) (IND)³⁸ of the front desk function for the application for and collection of regular (non-asylum) residence permits. The objective of the DT&V is to realise the departure from the Netherlands of all illegally-staying foreign nationals found in the Netherlands and of all asylum applicants who are required to leave the country, with priority given to the encouragement of independent (or voluntary) departure.

A reform of the Internal Security System³⁹ occurred in **Portugal** integrating the immigration and borders sections. In addition, the responsibility for controlling the external maritime border posts was transferred to the Aliens and Borders Service from the Fiscal Brigade of the National Republican Guard.⁴⁰ Other developments included the creation of a [High Commission for Immigration and Intercultural Dialogue](#),⁴¹ merging the High Commission for Immigration and Ethnic Minorities with the structure for technical support for the coordination of the Choices Programme, the Mission Structure for the Dialogue with Religions and the ‘Entreculturas’ Secretary.

Several new bodies were created and another body reinforced in **Spain** to enhance some aspects of the management of immigration. The [Forum for the Social Integration of Immigrants](#),⁴² initially set up in 2005, was consolidated and now has a greater degree of independence (e.g. it now has the capacity to draw up reports on its own initiative) and relevance (it has to issue statutory reports on nationwide projects, plans and programmes that have a bearing on the integration of immigrants). The setting up of a new Sectoral

³⁷ See <http://www.dienstterugkeerenvertrek.nl/>.

³⁸ See <http://www.ind.nl>.

³⁹ Ministers’ Council Resolution No. 45/2007, see <http://www.acime.gov.pt>.

⁴⁰ Order No. 6781-A/2007, dated 4 April 2007, see <http://biblioteca.mai.gov.pt/files/boletim/file.asp?ID=38>.

⁴¹ Decree-Law No. 167/2007, dated 3 May 2007, see www.dre.pt/pdf1sdip/2007/05/08500/29502954.PDF.

⁴² See <http://www.mtas.es/es/migraciones/Integracion/Foro/inicio/index.htm>.

Immigration Conference⁴³ was also approved, the purpose of which is to reinforce co-ordination among the public administrations in order to enhance the State and the regional authorities in the exercise of their competencies. The former Spanish International Co-operation Agency (*AECI*) was replaced by the new [Spanish International Co-operation Agency for Development \(AECID\)](#),⁴⁴ which is equipped with a more extensive network of technical co-operation offices located in different (third) countries, and above all with the new objective of considering Sub-Saharan Africa as a new priority region for Spanish co-operation. Finally, the [General Directorate of International Relations and Alien Affairs](#)⁴⁵ was created, its main objectives including the coordination of the Ministry of Interior's external actions by means of its liaison officers posted in embassies and consulates; participation in European Union groups and committees; bilateral and multilateral relationships between the Ministry of Interior and counterparts in other countries; and management of international activities linked to immigration within Ministry of Interior competences.

The [Romanian Immigration Office \(RIO\)](#),⁴⁶ within the Ministry of Interior and Administrative Reform, was established in **Romania** on 26th June 2007, through the re-organisation of the National Refugee Office and the Authority for Aliens, which were subsequently disbanded. Its responsibilities, granted by law, include the implementation of Romania's policies in the fields of migration, asylum and social integration of aliens, as well as of the relevant legislation. The newly created institution now undertakes also all the rights and obligations, previously performed by the Office for Labour Migration, in granting a migrant the legal right to work. The creation of the RIO followed the express recommendations made by EU experts within the framework of projects for building and strengthening institutional capacity, as well as the need for approximation to EU standards.

A new [Ministry of Integration and Gender Equality](#)⁴⁷ was formed in **Sweden** on 1st January 2007. It is responsible for democracy issues, discrimination issues, Non-Governmental Organisations, integration and diversity, gender equality, consumer affairs, citizenship, human rights, national minorities, youth policy and urban development. Another development was the discontinuation of the Swedish Integration Board as of July 2007. The motivation for this

⁴³ See http://extranjeros.mtin.es/es/Actualidad/Aprobacion_constitucion_conferencia_sectorial_inmigracion.html.

⁴⁴ See <http://www.aecid.es/>.

⁴⁵ See <http://www.mir.es/MIR/estorganica/estructura/secestseg/Extranjeria.html>

⁴⁶ See <http://aps.mira.gov.ro/>.

⁴⁷ See <http://www.sweden.gov.se/sb/d/8366;jsessionid=a7g8oyR8rfV6>.

was that, according to the Government, Swedish integration policy had so far failed to deliver the expected results. Relevant activities of the agency that were considered to be worth maintaining were mainstreamed or devolved to other government agencies. In line with the legislative changes, the Government proposed that the current four Ombudsmen (the Equality Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination on the grounds of Sexual Orientation) are merged into a single national authority, called the [Discrimination-Ombudsman](#).⁴⁸

As of 1st April 2007, the **United Kingdom** Home Office's Immigration and Nationality Directorate became the [Border and Immigration Agency \(BIA\)](#).⁴⁹ Whilst still part of the Home Office, this permitted the BIA to have greater freedom to improve and change the way it operated, and to have more accountability for its strengths and any failings. In July 2007 it was further announced that, from 2008, there would be a unified border force which would bring together the work of the Border and Immigration Agency, UKvisas and the detection work at the border by HM Revenue and Customs, into a single organisation responsible for tackling smuggling, as well as immigration control. Additionally, a [Migration Advisory Committee](#)⁵⁰ was created, further details of which are given in [Section 3.4](#).

3. SPECIFIC DEVELOPMENTS IN ASYLUM AND MIGRATION

In the following sub-sections, the most significant developments within specific areas of asylum and migration are outlined. Consequently, not all Member States may be mentioned in each sub-section, given this purpose of highlighting only the most significant developments. Since it is often the case that legislation follows policy proposals, both of these elements are included, as well as relevant public debates.

3.1 Control and Monitoring of Immigration

In March 2007, at a public session in Lisbon, **Portugal** handed over to the Home Ministers of the Czech Republic, **Estonia**, **Latvia**, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, the [SISone4all](#)⁵¹ information system that allowed the full integration of these Member States into the Schengen Area, an act that concluded the Portuguese Presidency of the European Union, on 21st December 2007. In order to fulfil the requirements of the

⁴⁸ See <http://www.do.se/>.

⁴⁹ See <http://www.ukba.homeoffice.gov.uk/>.

⁵⁰ See <http://www.bia.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/>.

⁵¹ Further details available from <http://www.sisone4all.sef.pt/>.

Schengen acquis, these Member States had to make the appropriate amendments in their respective immigration legislation. In the case of **Estonia**, many authorities responsible for asylum and migration introduced several administrative changes. A number of infrastructure improvements were also made, with (financial) support also provided through the [Schengen Facility programme](#).⁵² In **Latvia**, this included the introduction and/or amendments of a number of Regulations and the introduction or amendment of existing legislation,⁵³ such as, for example, their *Schengen Information System Processing Law*. Nationally, **Portugal** developed and implemented the project RAPID (Automatic Recognition of Automatically Identified Passengers), permitting an automated control of passengers holding electronic passports, via biometric facial recognition.

The first phase of the previously reported (in 2006) [Automated Fingerprint Identification System](#)⁵⁴ was launched in **Ireland**. This new system allows for the electronic taking and exchange of fingerprint data on persons seeking asylum with the central EURODAC fingerprint database. Subsequent further developments to come during 2008 include providing for the capture and storing of fingerprints upon registration by the Garda National Immigration Bureau, and also provide Garda Immigration authorities with the ability to capture and store prints at ports of entry, including at sea and airports.

As part of its policy programme for the period 2007-2011, the **Netherlands** government paid particular attention to the development of a system for determining a person's identity, with the intention being to start using a new identification system in 2010. Other developments included the publication of a [study](#)⁵⁵ by the National Ombudsman into the issuing of so-called W2 documents to foreign nationals, which criticised the non-issuing of this document to former asylum applicants who apply for a regular (non-asylum) residence permit; plus the shelving of plans, reported in 2006, to terminate more quickly the residence of foreign nationals who commit crimes (instead a study was commissioned into the application and effectiveness of the current policy and possible increase in the effectiveness of the policy by

⁵² See <http://www.siseministerium.ee/17033>. For the period 2004-2007, the EU provided €77 million for 78 projects.

⁵³ National Report of **Latvia** provides more details on these.

⁵⁴ See

<http://www.justice.ie/en/JELR/Pages/Minister%20Lenihan%20launches%20new%20Garda%20and%20Immigration%20Automated%20Fingerprint%20Identification%20System>.

⁵⁵ See http://www.ombudsman.nl/rapporten/grote_onderzoeken/2007W2documenten/Samenvatting%20rapport%202007-060.pdf.

means of the proposed tightening of the rules); and the delay in the ratification of the [Treaty of Prüm](#)⁵⁶ (for the intensification of cross-border collaboration particularly in combating terrorism, cross-border criminality and illegal immigration), by the House of Representatives, with the debate in Senate still ongoing at the end of 2007.

The strategy in **Spain** of linking immigration to access to the labour market, includes controlling and fighting against illegal immigration. For example, the *Labour and Social Security Inspectorate* is responsible for tackling the hiring of illegally-staying third country national workers, who are often in the so-called hidden economy, and which is considered to be one of the pull factors for illegal immigration. Another approach was in promoting collaboration with the countries of origin for immigration, through Migratory Flow Regulation and Planning Agreements, Readmission Agreements and the new Migratory Co-operation Framework Agreements, as well as through development co-operation. In addition, several legal provisions were approved in 2007 that directly impact immigration control and monitoring, i.e. Royal Decree 523/2006, Royal Decree 732/2007; Orders PRE/4008/2006, 1282/2007, 1283/2007; Organic Law 13/2007, Resolution 3381 and Instrument 11128. For example, Organic law 13/2007 addresses the pursuit abroad of those responsible for undertaking illegal trafficking or illegal immigration of persons.⁵⁷

The previously mentioned **United Kingdom Borders Act** permitted the Secretary of State to attach reporting and/or residency conditions to the granting of limited leave to remain.⁵⁸ Ministers made clear that they proposed to use the new powers in respect of two categories of persons: those who have committed serious crimes in the United Kingdom but whose removal would breach international obligations; and, on a case-by-case basis, to former asylum-seeking children, primarily to improve contact management with vulnerable members of this group, for both child protection and immigration purposes. A programme to strengthen the UK's offshore border controls was also announced, with new passenger screening technology. The [e-Borders system](#)⁵⁹ will require carriers to provide passenger and crew details in advance of travel for screening against immigration, customs and police watch lists. By the end of 2007, a successful pilot of the new system had led to more than 18 000 alerts being issued to the border agencies and more than 1 500 arrests being made.

⁵⁶ See <http://register.consilium.europa.eu/pdf/en/05/st10/st10900.en05.pdf>.

⁵⁷ National Report of **Spain** provides more details on what these legal provisions cover.

⁵⁸ See <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/ukbordersact/>.

⁵⁹ See <http://www.bia.homeoffice.gov.uk/managingborders/technology/eborders/>.

3.2 Refugee Protection and Asylum

The number of asylum applications made in **Austria** in 2007 declined by 11% compared to the previous year, amounting to 11 921, and continuing a decrease since a peak in 2002 of 39 354 applications. Currently, there are a total of approximately 35 000 applications still in the process of being assessed. Significant issues arose in connection to the detention of asylum applicants, on the access to the labour market of asylum applicants, and on the humanitarian right to residence. It was reported⁶⁰ that the *Aliens Police Act 2005* has resulted in a significant increase in the number of asylum applicants in Detention-Pending Deportation, from 662 in 2005 to 2 700 in 2006, even though the number of asylum applications declined. The Constitutional Service of the Federal Chancellery expressed doubts about the conformity of this provision with Article 5 of the *European Convention on Human Rights (ECHR)*. Forum Asyl⁶¹ called for abolishing Detention-Pending Deportation, arguing that it was not only degrading but also very expensive. The Austrian Red Cross (Österreichisches Rotes Kreuz, RK⁶²) called for *inter alia* provisions for access to legal assistance, the development of best practice models and the establishment of half-open centres for detention. The Austrian Ministry of Interior has insisted on Detention-Pending Deportation as an important measure to prevent the respective asylum applicant from being pushed into criminality and illegality. Another development was in the context of the so-called "Bartenstein Decree."⁶³ Since 2004, asylum applicants are mostly excluded from the labour market, other than for seasonal work or, after three months of their legal procedure, in sectors where there is a specific need. The consequence of this decree for some asylum applicants has been to lose employment and their right to unemployment compensation. There have been several calls to ease access of asylum applicants to the labour market, in light of, for example, the labour shortages currently being experienced in Austria (see [Section 3.4](#)) and in order to promote integration. Certain elements of the Austrian government, however, are opposed to this opening of the labour market on the grounds that this might *inter alia* lead to Austria becoming more attractive for asylum applicants. Another important policy debate focussed on the humanitarian right to residence, which arose in the context of a 15 year-old girl originating from Kosovo who had entered illegally and then applied for asylum, which

⁶⁰ See

https://wcd.coe.int/ViewDoc.jsp?id=1225283&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P242_66169 and <http://www.menschenrechtsbeirat.at/>.

⁶¹ A cooperation between Amnesty International Austria, Asylkoordination Austria, Caritas, Diakonie, Integrationshaus, Austrian Red Cross and Volkshilfe. See <http://www.fluchtistkeinverbrechen.at/>.

⁶² See its position paper at http://www.roteskreuz.at/fileadmin/user_upload/PDF/Migration/Schubhaft.pdf.

⁶³ See <http://www.unhcr.at/aktuell/einzelansicht/article/351/-cf2aba8464.html>.

was finally rejected. A removal order was issued in 2004, but not enforced, so that in 2007 the girl and her siblings had been in Austria for five years and considered to be integrated into Austrian society. This case, and others like it, fuelled (still ongoing) debates on whether and under what specific circumstances (e.g. long asylum proceedings which lead to a stay of several years in Austria) a humanitarian residence permit should be granted if persons are already well integrated. Furthermore, the Federal Constitutional Court declared, in a proceeding which started in 2007, that certain provisions concerning humanitarian right to residence unconstitutional.⁶⁴

A total of 11 115 asylum applications (“at the counter”, accompanying children not included) were made in **Belgium** during 2007. This was a decrease of approximately 4% compared to 2006 and is the lowest level since 1989. The Russian Federation (Chechnya), Serbia-Montenegro, Iraq, DR Congo and Afghanistan continued to be the main five countries of origin. Several demonstrations and hunger strikes of refugees took place, attracting much [media attention](#).⁶⁵ As well as demanding a residence permit, there were also actions targeting the asylum policy of the *Commissioner General on Refugees and Stateless Persons (CGRS)*, in particular with respect to granting subsidiary protection only to people originating from certain parts of Afghanistan.

For **Estonia**, in 2007, a total of 14 applications for asylum were made – 7 Byelorussian, 4 Sri Lankan and 3 Russian nationals. Asylum was granted to two and additional protection also to two (two from Sri Lanka, one each from Russia and Byelorussia). Although the numbers are small (4), an increase in the number of applications being made at the border occurred which is attributed to the increased possibility to move on towards Western Europe.

A total of 3 985⁶⁶ asylum applications were lodged in **Ireland** in 2007, the lowest since 1997 and a 7.6% decrease on the corresponding figure of 4 314 in 2006. This represented less than 4% of the estimated total gross immigration in 2007. The total number of first instance asylum applications processed to completion in 2007 was 4 152. In addition, within the

⁶⁴ Decision, Federal Constitutional Court, G 246/07, 27.06.2008.

⁶⁵ See <http://www.brusselnieuws.be/artikels/stadsnieuws/hongerstaking-in-miniemenkerk>.

⁶⁶ This figure includes also 225 Transfer Orders effected under the EU Dublin II Regulation in 2007. Applications from 220 nationals of **Romania** were also made, but adjudged to be inadmissible in accordance with the *EU Treaty Protocol on asylum for nationals of Member States of the European Union*.

context of the Government's [Refugee Resettlement Programme](#),⁶⁷ 200 programme refugees were approved for resettlement and 114 admitted. Much media and civil society discussion occurred in **Ireland** during 2007 regarding a ruling by the Irish Supreme Court that statistics on asylum appeal decisions by a member of the *Refugee Appeals Tribunal (RAT)* could be examined in a High Court case. Judicial review proceedings were launched against a member of this Tribunal who allegedly had an almost 100% refusal rate on an estimated 1 000 refugee appeals. Following the June 2007 Supreme Court judgment, these statistics are to be produced in order that the High Court could then investigate this claim of bias further.

As part of its implementation of Council Directive 2004/83/EC (Qualification Directive), **Italy** enhanced the operation of its *Asylum Territorial Committees* resulting in a reduction in the time now needed for the recognition of refugee or subsidiary protection status. The Ministry of Interior, in cooperation with the National Association of Municipalities of Italy, also improved its system for the reception of asylum applicants.⁶⁸

The **Netherlands** received a total of 9 750 applications for asylum in 2007, a decrease from 2006 when it was 14 450.⁶⁹ A number of changes took place in the **Netherlands** in their legislation and regulations relating to asylum, partly as a result of case law. As an example, a ruling from the [European Court of Human Rights](#)⁷⁰ decided that Article 3 of the *European Convention on Human Rights (ECHR)* had been violated by the Netherlands. This had far-reaching consequences for Dutch asylum policy, as it qualified the so-called 'singled-out criterion'. Consequently, it is now assumed that there is also a real and individual risk of treatment that contravenes Article 3 of the ECHR if (i) a foreign national belongs to a vulnerable minority group in his/her country of origin; and (ii) they can demonstrate, by means of (in itself limited) individual indications, that as a result of these indications there is a threat of violations of Article 3 of the ECHR. A number of groups have subsequently been designated vulnerable minority groups in their country of origin. Additionally, following an official notice from the Ministry of Foreign Affairs on the situation in Iraq, a policy of categorical protection of persons coming from the centre and south of Iraq was initiated in April 2007. In a separate but related development, the issuing of notices from this Ministry

⁶⁷ See http://www.ria.gov.ie/integration/programme_refugees/.

⁶⁸ For more information, see <http://www.serviziocentrale.it/>.

⁶⁹ This includes second or subsequent applications.

⁷⁰ Salah Sheekh/Netherlands, no. 1948/04, available from <http://cmr.jur.ru.nl/cmr/docs/SALAH.SHEEKH.THE.NETHERLANDS.pdf>.

was criticised by the [National Ombudsman](#)⁷¹ on the grounds that they do not always exercise enough care in the formulation of individual notices,⁷² resulting in prejudice and bias. This criticism was robustly rejected by both the Ministry of Foreign Affairs and the State Secretary of Justice arguing that there was a need to protect the identity of confidants in the countries for which such notices were issued. Like for **Austria**, access to the labour market in the **Netherlands** for asylum applicants was considered, with the Minister of Social Affairs and Employment submitting a proposal (in October 2007) for amending the Aliens Employment Act to *inter alia* permit employment for asylum applicants from 12 to 14 weeks out of every 52 weeks in certain sectors, but still only after the first six months of the asylum procedure. The government did not wish to expand too much employment opportunities, arguing that for an asylum applicant who has had access to the labour market for an extended period of time, and therefore has been actively participating in society, to subsequently receive a negative decision on their asylum application, may then make it harder for them to initiate a return to their country of origin.

In the context of promoting active policies to host and support asylum applicants, **Portugal**, in co-ordination with the *United Nations High Commission for Refugees* and the *Portuguese Council for Refugees*, established⁷³ the conditions to annually accept 30 individuals under the refugee resettlement programme.

A total of 7 664 applications for asylum were filed in **Spain** in 2007, a significant increase from 2006 when 5 297 applications (44.7% more) were made. Of this total for 2007, some 3 296 were submitted on national (Spanish) territory, 2 644 at the border and 1 724 at Diplomatic Missions. The increase was primarily attributed to applications filed before Diplomatic or Consular Missions, with notable significant increases in applications by nationals of Iraq, made at Spanish consulates in Egypt, and applications by Colombian nationals at border posts, especially Barajas Airport in Madrid. A second amendment of Law 5/1984⁷⁴ (which governs the right to asylum and the status of refugee), added a new *Third Additional Provision to the Law*, granting the status of refugee and right to asylum to foreign

⁷¹ De Nationale Ombudsman. (2007) Persbericht: Asielprocedures niet altijd eerlijk (Press release: Asylum procedures not always fair), available from www.ombudsman.nl.

⁷² Individual official notices are used to check facts or documents presented by asylum applicants for correctness and authenticity.

⁷³ Cabinet Resolution No. 110/2007, available from http://www.refugiados.net/cidadevirtual/legislacao/leis/resol_conselho_ministros_21ago2007.pdf.

⁷⁴ <http://www.mir.es/SGACAVT/derecho/le/le05-1984.html>.

women that flee from their countries of origin owing to a well-founded fear of suffering persecution as a result of their gender.

Since 2003, 36 700 Iraqis have applied for asylum in **Sweden**, with the highest annual amount occurring in 2007 with 18 600 applications. About 50% of all asylum applications from Iraqis to the EU in 2007 were made in Sweden. As also mentioned in [Section 2.4](#), there was much political and public debate concerning the conditions of reception and the fact that some Swedish municipalities declined to accommodate asylum applicants.

The **United Kingdom** continued with the introduction of a new end-to-end process for asylum cases, aiming to complete asylum cases within six months and ensuring that the applicants are either granted leave to remain or removed from the United Kingdom within that time period. By April 2007 all new asylum applications (aside from those made by persons serving a custodial sentence, who were managed separately) were handled by the new regional asylum teams.⁷⁵ The Border and Immigration Agency also continued to work collaboratively with UNHCR to make a series of improvements to the asylum system. For example, improvements in the approach to judging the credibility of asylum claims were implemented in conjunction with UNHCR and revised guidance was issued to operational staff.

3.3 Unaccompanied Minors⁷⁶

Asylum applications by unaccompanied minors in **Belgium** increased by approximately 15% in 2007, with five nationalities (Afghanistan, Guinea, Democratic Republic of Congo, Russia and Iraq) representing 50% of the applications. Discussion continued on the presence of children in detention centres, with the lessons learned from the judgement in the [Tabhita](#)⁷⁷ case reflected in the previously mentioned *Asylum Seekers and Certain other Categories of Aliens Act* of 12th January 2007. Unaccompanied minors seeking asylum can no longer be detained in closed centres, but have to be lodged in an Observation and Orientation Centre. In

⁷⁵ Further details available from <http://www.bia.homeoffice.gov.uk/asylum/process/>.

⁷⁶ In 2009, the EMN will complete a study on Unaccompanied Minors and the Fundamental Rights Agency will also undertake a complementary study on Separated Children.

⁷⁷ European Court of Human Rights, Judgement 12 October 2006, available from <https://wcd.coe.int/ViewDoc.jsp?id=1047361&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

case there is a doubt about them being a minor, an examination should take place within three days.

Unaccompanied minors under State care in **Ireland** continued to be an issue throughout 2007. Public debate centred on figures released by the Health Service Executive (HSE), which reported that in the period from 2001 to 2005, 328 migrant children had gone missing from State care. The HSE also reported to a national newspaper⁷⁸ that the accommodation provided to unaccompanied minors was currently below standard and it was elsewhere noted⁷⁹ that they often had minimum levels of staffing, which was considered to be a 'likely contributor' to the fact that unaccompanied minors went missing from care. In light of this, the Irish Refugee Council (IRC) and the Irish Society for Prevention of Cruelty to Children (ISPCC) repeated a call for a strengthened social work service to be available at Irish ports and airports to assist with the identification, assessment and referral of vulnerable children upon entry to Ireland. Other agencies called for better service provision levels to be made available to unaccompanied minors and the Ombudsman expressed concern⁸⁰ that the level of care provision for unaccompanied minors (including implicit and explicit victims of trafficking) was lower than that available to out-of-home children within the child protection system.

As well as the committee for the protection of unaccompanied minors, a new ad-hoc [Organism for EU Minors](#)⁸¹ was established in **Italy** in October 2007. The task of this body was to ensure children's rights in the country and to assess the reception and return programmes. Most of the unaccompanied minors arriving in Italy come from the Balkan States.

The situation of unaccompanied minors in the **Netherlands** was again regularly debated, with continued attention given to their disappearance from asylum reception facilities, possibly as victims of human trafficking. As well as launching a pilot project to provide certain unaccompanied minors with protected reception facilities, the House of Representatives

⁷⁸ *The Irish Times*, October 2007. 'Child asylum hostels fail minimum standards'. Available at <http://www.ireland.com/newspaper/ireland/2007/1029/1193444067460.html>.

⁷⁹ *The Irish Times*, July 2007. 'Judge says social workers' caseloads 'impossibly large'. Available at <http://www.ireland.com/newspaper/frontpage/2007/0710/1183751755275.html>.

⁸⁰ Ombudsman for Children, Emily Logan, is quoted as stating that "Victims of trafficking, and indeed unaccompanied minors generally, receive a lower level of protection and assistance than Irish children in care", *The Irish Times*, July 2007. 'Failings of hostels for trafficked children raised'. Available at <http://www.ireland.com/newspaper/ireland/2007/0703/1183410168459.html>.

⁸¹ See http://www.interno.it/mininterno/export/sites/default/it/assets/files/15/0288_decreto_minori.pdf.

requested (in April 2007) that the State Secretary of Justice ensure that the Aliens Police had the resources available to immediately investigate the disappearance of unaccompanied minors. The State Secretary presented a number of measures⁸² for this purpose in August 2007, including the revision of the existing protocol on missing unaccompanied minor foreign nationals. A successful operation⁸³ by the Dutch police (in October 2007), in conjunction with the authorities in the United States, **United Kingdom, Belgium, France, Germany and Spain**, broke up an internationally operating organisation suspected of having brought unaccompanied minor asylum applicants - mostly girls - from Nigeria into the Netherlands over a period of many years and on a large scale. These minors were probably recruited under false pretences to work in the prostitution business elsewhere in Europe. Another issue which arose was that of so-called former unaccompanied minors who, when coming of age, were no longer entitled to a residence permit as a minor, unless they had held such a residence permit for three years. Because payment of a living allowance is stopped, this group remained in the Netherlands but without adequate support. Measures proposed to address this situation included, on the one hand, the promotion of return migration and, on the other hand, steps towards legal residence such as, for example, a pardon scheme (see [Section 3.8](#)), relaxation of the so-called B9 scheme (see [Section 3.9](#)) and a more relaxed application of the *no blame-criterion*.⁸⁴

The aforementioned immigration law in **Portugal** envisages granting all kinds of material support and the necessary assistance to satisfy the basic needs of food, hygiene, housing and medical assistance to unaccompanied minors who are awaiting a decision about whether they will be admitted or returned to a third country. If return proceedings are undertaken, guarantees will have to be provided that they will receive adequate accommodation and assistance upon their arrival in their country of origin or in another third country. Likewise, within the scope of granting residence permits to victims of human trafficking or individuals who cooperate with the authorities in combating illegal immigration, the new immigration law decrees that all due and suitable diligence must be taken to clarify the identity and nationality of the unaccompanied minor, as well as to locate his or her family.

⁸²Parliamentary Papers II 2006/07, 27 062 and 19 637, no. 60 (Letter).

⁸³Openbaar Ministerie. (24 October 2007) *Internationale actie tegen handel in minderjarige Nigerian asielzoekers* (International action against the trade of minor Nigerian asylum seekers), see http://www.om.nl/dossier/soorten_misdrijven/human_trafficking.

⁸⁴The *no blame-criterion* applies to foreign nationals who are required to leave the Netherlands but who are unable to do so through circumstances beyond their control.

Pursuant to the applicable legislation in **Spain**, the regional authorities are responsible for the guardianship and protection of unaccompanied foreign minors. The *General Administration of the State* takes the steps necessary to reunite the minor with their family when the conditions so allow and provides financial support to the regional authorities. Furthermore, a special measure was introduced related to the exceptional circumstances that arose due to the increase in the number of unaccompanied minors arriving on the Canary Islands during 2006. Royal Decree 868/2007 was passed to regulate the direct granting of subsidies to the entities responsible for caring for unaccompanied minors within the framework of a Special Programme for the transfer and care of unaccompanied minors from the Canary Islands Region. Other actions were also taken during 2006 in regard to establishing close co-operation with and providing technical support to the minors' countries of origin in order to contribute to the creation and development of intervention strategies for children at risk, as well as to generate opportunities in those countries and prevent the illegal immigration of children. A co-operation agreement was concluded with **Romania** and similar agreements are currently under negotiation with Morocco and Senegal. With regard to asylum applications from unaccompanied minors, although the number is very low (12 applications were processed in 2007), a series of actions have been carried out aimed at defending the best interests of the child to prevent situations of vulnerability. For example, the processing of asylum applications for minors has been given special treatment in the "*Best Practices Guide for the formalisation of asylum applications*", drafted by the *General Directorate of Internal Policy* in 2007.

Sweden experienced a 50% increase in the numbers of unaccompanied minors from 820 in 2006 to 1 264 in 2007. Iraqi children made up the largest group of these minors (621), with the other large groups being Somali and Afghani minors. Primarily owing to this dramatic increase, and as mentioned in [Section 2.4](#), not enough municipalities have entered into voluntary agreements with the Migration Board for the reception of these unaccompanied minors. A situation that was much discussed in the media. In order to, in some way, address this, the government, in its [Spring Fiscal Policy Bill](#),⁸⁵ declared that the compensation for municipalities for the reception of unaccompanied minors will be raised. Similar to the disappearance of unaccompanied minors in the **Netherlands**, during 2006 and 2007, **Sweden** also had a high number of unaccompanied asylum-seeking Chinese minors disappear from the

⁸⁵ See page 44 of budget Statement at <http://www.sweden.gov.se/content/1/c6/08/13/85/bf262eb1.pdf>.

special housing provided for them. As a result, the Swedish Border Control Police, the Migration Board and the Social Services agreed on a common Action Plan to address this phenomenon. The aim of the Action Plan is to minimise the risks of unaccompanied asylum-seeking minors disappearing and becoming victims of trafficking. It has proven to be an effective tool, as the co-operation between the authorities have led to the arrest and prosecution of organisers of trafficking in children in a few cases and, as a result, fewer unaccompanied asylum-seeking minors from China.

3.4 Economic Migration

As initially reported in 2006, in **Austria**, economic migration continued to be debated in the context of admission of nurses from neighbouring, including EU, countries, who have mostly been employed illegally.

Economic migration in **Belgium** was widely debated, with three propositions formulated by the provisional government in 2007, although no definitive agreement was reached. Firstly, there was political agreement to abandon all restrictions on the “free movement” to nationals from EU-8 Member States. Before this, flexible rules to fill ‘bottleneck vacancies’ (shortage occupations) for EU-8 nationals were used. The transition period will now expire on 1st May 2009 and will not be prolonged. Secondly, a system of “Blue Cards” is to be put in place (in conformity with the so-called [“EU Blue Card” directive](#)⁸⁶ for highly-qualified workers) to allow ‘suitable’ workers to obtain a temporary work- and residence permit. Thirdly, social partners were also deeply involved in the debate. For example, an employers’ organisation (Unizo⁸⁷) proposed a one-off regularisation of illegally-staying migrants who had resided on Belgian territory since 1st January 2006 and who could present evidence of a professional occupation.

Mechanisms for the simplification of labour mobility in **Estonia** occurred through an amendment of the *Aliens Act*. These amendments enter into force in 2008 and include increasing the quota of immigration from 0.05% (686 persons in 2007) to 0.1% of the permanent population; obliging the employer to pay a salary which is at least equal to 1.24 times the Estonian average salary; and shortening the time for obtaining a permit from the

⁸⁶ See <http://www.europarl.europa.eu/oeil/file.jsp?id=5553642>.

⁸⁷ *Unizo wil illegalen regulariseren*, Article in De Standaard of 17th August 2007, <http://www.standaard.be/Artikel/Detail.aspx?artikelId=FR1G3GE6&word=regulariseren+unizo>.

Labour Market Board from two months to three weeks.

Germany announced that it would be made easier for foreign graduates of German universities, regardless of their discipline, to be able to work in Germany, and, through the *Directive Transposition Act*, it also became easier for self-employed persons to enter Germany with the lifting of the requirement that one million Euros be invested and ten jobs created. It was also announced that a legal basis would be created to grant a residence permit to freelancers.

The [Employment Permits Act 2006](#)⁸⁸ in **Ireland** entered into force in January 2007, providing for the application, granting, renewal, refusal and revocation of employment permits and introduced three elements: a type of “Green Card” for any position with an annual salary of €60,000 or more in any sector (or for a restricted list of occupations where skill shortages have been identified with an annual salary range from €30,000 to €9,999); a re-established Intra-Company Transfer scheme for temporary trans-national management transfers; and a Work Permit scheme for a very restricted list of occupations up to €30,000, where the shortage is one of labour rather than skills. New employment permit arrangements, under the *Employment Permits Acts 2003, 2006*, also came into effect on 1st February 2007. This scheme was designed to ease access to employment for spouses and dependent unmarried children under the age of 18 who have been admitted into Ireland as family members of employment permit holders. Similar to developments in **Germany** and the **Netherlands**, the [Third Level Graduate Scheme](#),⁸⁹ which permitted non-EU/EEA national students from Irish universities to remain in Ireland for up to six months for the purpose of seeking employment and apply for a green card or work permit, was implemented. In December 2007, a significant debate occurred in media and Parliament regarding international students with school-aged children who were not entitled to enrol in free State primary and secondary education. This resulted in a call for the Government to apply similar rules to the **United Kingdom** which does provide this entitlement. Other developments were the launching of a [Code of Practice for Protecting Persons Employed in other People’s Homes](#),⁹⁰ an area of particular concern for female migrant workers, and the Migrant Rights Centre of Ireland (MRCI) launching a

⁸⁸ Text available from <http://www.oireachtas.ie/documents/bills28/acts/2006/A1606.pdf>.

⁸⁹ See http://www.icosirl.ie/eng/student_information/third_level_graduate_scheme.

⁹⁰ See <http://www.lrc.ie/viewdoc.asp?DocID=609&m=f>.

renewed campaign for a [bridging visa](#)⁹¹ to allow illegally-staying migrants to regularise their status.

The Government of **Italy** regulated, by separate decrees, the new entry of seasonal workers and employees. In the three year period 2005-2007, approximately 1.5 million applications for the recruitment of third country workers were submitted by employers and Italian households: 251 000 in 2005, 540 000 in 2006 and 743 000 in 2007. In 2007, however, the share of authorised applications amounted to 170 000 workers,⁹² far below the needs of the labour market in a country with an increasing elderly population and where families in need of care for the elderly are the main employers of third countries nationals.⁹³

The new government in the **Netherlands** gave much prominence, as part of its aim to develop a "modern migration policy", to increasing the attractiveness of the Netherlands to highly-skilled workers with a number of initiatives launched and changes (so-called 'quick wins') implemented. For example, like for **Germany** and **Ireland**, there was an extension of the job search period for foreign students after their studies up to a maximum of one year, as well as the lowering of their income limit to €25 000. Also a points system was initiated for the admission of foreign nationals who wish to be self-employed, though not yet implemented in 2007. Another change was making the shortened provisional residence permit procedure accessible to more companies by removing the condition that companies bring a minimum of ten foreign nationals per year into the country for employment or work placement. The procedure for family members of highly-skilled migrants to submit their residence application was also simplified, even if they entered the Netherlands after the highly-skilled migrant, with fast-track processing of their application (nominally within two weeks). With a view to simplification, a single front office was set up for the uniform processing of both residence permit and work permit applications at the same time and by the same office.

The new immigration law in **Portugal** reduced the types of visas to exercise a professional activity and to study, to temporary stay visas and to residence visas. The new law also introduced significant changes in terms of permitting the issuing of a residence visa for

⁹¹ Further details available from http://www.mrci.ie/policy_work/IrregMigrant_UndocuMigrant.htm.

⁹² See http://www.governo.it/GovernoInforma/Dossier/decreto_flussi_2008/decreto_2007.pdf.

⁹³ Since 1998 the additional need of third countries workers is annually monitored by the wide survey conducted by Union of Italian Chambers in cooperation with the Ministry of Labour on a sample of 100 000 private companies (Excelsior project). See, <http://excelsior.unioncamere.net/>.

employment in an activity which it has not been possible to fill under the principle of Community preference. In this context, the [Institute for Employment and Professional Training \(IEFP\)](#)⁹⁴ maintains an information system that is constantly updated and accessible to the public on the availability of such positions.

In **Spain**, economic immigration dominates over other types of migration. Of the total foreign population legally-residing in Spain on 31st December 2007, 83.35% was between 16 and 64 years old, with an average age of 33. In 2007, a total of 331 625 work permits were granted, of which 116 994 were first-time issued permits and 214 631 were for renewals. Additionally, the quota system for third country national workers permitted 56 000 authorised job offers, both for permanent and for temporary positions, in 2007. For 2008, the provisional quota for third country national permanent workers was 15 731.

In April 2007, the **United Kingdom**'s Immigration Minister announced the timetable for introducing the previously mentioned [Points-Based System](#).⁹⁵ To underpin this system, a [Migration Advisory Committee](#) (MAC)⁹⁶ was also established. The MAC is tasked with providing independent, evidence-based advice⁹⁷ to Government on specific sectors and occupations where shortages of skilled labour exist and which can sensibly be filled by migration. In its reporting, the MAC produces a recommended shortage occupation list covering the whole of the United Kingdom, plus another list for Scotland only containing additional shortage occupations there. The MAC's designated list of shortage occupations, subject to acceptance by the Government, are then used as the basis for enabling licensed employers to bring migrants for these occupations into the United Kingdom without the migrant having to gain points for earnings and qualifications, and without the job being first subject to a resident labour market test.

In respect to opening up the labour market to other EU-8 or EU-2 nationals,⁹⁸ **Germany** decided to facilitate the immigration of engineers who are nationals of these Member States,

⁹⁴ See <http://www.iefp.pt/Paginas/Home.aspx>.

⁹⁵ See <http://www.homeoffice.gov.uk/documents/command-points-based-migration?view=Binary>.

⁹⁶ See <http://www.bia.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/>.

⁹⁷ See <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/macreport2008> for the first report from the MAC.

⁹⁸ Details of the transitional provisions are available from <http://ec.europa.eu/social/main.jsp?catId=466&langId=en>.

whilst in **Ireland**, **Latvia** and **United Kingdom** steps were taken to restrict the access of nationals of Bulgaria and **Romania** upon their accession to the EU.

3.5 Family Reunification⁹⁹

The family reunification procedures in **Austria** were criticised by the opposition parties, as well as by civil society organisations, for being discriminatory against Austrian nationals. Indeed, different provisions apply for third country national family members depending on whether the sponsor is an Austrian national or another EU national exercising the right to free movement and residing in Austria. For most Austrian nationals who wish to bring their (third country national) dependants into Austria, it is sometimes not possible. However, a ruling by the Federal Constitutional Court (VfGH),¹⁰⁰ declared that the applicable article (Article 47) of the Settlement and Residence ACT (NAG) does not contradict the principle of equality, because the EU Freedom of Movement Directive (2004/38/EC) aims to facilitate the movement and settlement of EU nationals. Additionally, stricter regulations for those who are not making use of the European freedom of movement would maintain the well-regulated Aliens' System and impede possible abuse.

In **Belgium** the law (of 15th September 2006) regarding family reunification for non-EU nationals came into force on 1st June 2007. The right of family reunification became subject to a number of additional conditions, namely; sufficient housing conditions (except for recognised refugees); health insurance for all family members; and the age at which a non-EU national after a marriage may enter for the purpose of family reunification, was raised from 18 to 21 years.

Family reunification accounted for 28.5% of the total immigration of third country nationals to **Germany** in 2006. A forced marriage was newly introduced as grounds for the exclusion of spouse reunification, with the minimum age increased to 18 years and proof of a simple knowledge of German, also as part of new provisions for the promotion of integration, introduced in order to counter forced marriages. Exceptions to these were possible, for example, for spouses of highly-qualified persons. On 13th December 2007, the Federal Parliament of **Germany** adopted a draft *Bill to Challenge "Pretend Paternity"*, i.e. paternities

⁹⁹ The EMN has recently completed a study on Family Reunification in the context of the implementation of Council Directive 2003/86/EC (ISBN: 978-92-79-07798-2).

¹⁰⁰ Decision B 1462/06 of 13th October 2007.

where there is neither a social-family relationship nor biological paternity, in order to prevent third country nationals from gaining residence by means of abusive paternity recognitions. The draft Bill supplements the regulations in the Civil Code (*Bürgerliches Gesetzbuch*) to include a right for public agencies to challenge such paternities.

The *Department of Justice, Equality and Law Reform in Ireland*¹⁰¹ received a total of 647 applications for family reunification from recognised refugee status holders in 2007, an increase of 490% from 2006. As of September 2007, the average processing time for family reunification applications was 24 months. In mid-2007 procedures for applications for family reunification were [published](#),¹⁰² although only for recognised refugees, as there are no statutory provisions for the family reunification of migrants who do not have refugee status or are EU/EEA nationals.

Italy transposed Council Directive 2003/86/EC on family reunification,¹⁰³ and abolished the need for a residence permit for third country national minors adopted or given up for the purpose of adoption.¹⁰⁴ Of the just under 100 000 migrants entering for the purpose of family reunification in 2007, two thirds were spouses and the remaining one-third were children.

Admission to the **Netherlands** in the context of extended family reunification has only been defined in family reunification policy for children who have come of age and not for other family members outside the nuclear family. Leaving an adult child behind in the country of origin is considered unduly harsh, if there are one or more special individual circumstances that would create a distressing situation if this child were to remain in the country of origin. Since April 2007, a policy has also been formulated whereby the conditions that apply to adult children, now apply equally for the admission of other family members and relatives in the context of extended family reunification, such as nephews, nieces and cousins, brothers, sisters and grandparents. Effective from 18th October 2007, a number of other changes were implemented with respect to the possible violation of Article 8 of the European Convention on Human Rights (ECHR) in cases of termination of residence, as a result of developments in

¹⁰¹ Note that **Ireland**, like for Denmark and **United Kingdom**, did not participate in the adoption of Directive 2003/86/EC on Family Reunification and thus are not bound by or subject to its application.

¹⁰² See <http://www.inis.gov.ie/en/INIS/Pages/WP07000026>.

¹⁰³ See <http://www.parlamento.it/leggi/deleghe/07005dl.htm>.

¹⁰⁴ Further details available from http://interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/minori/Direttiva_sullabolizione_della_richiesta_del_permesso_di_soggiorno_per_il_minore_straniero_adottato_o_affidato_a_scopo_di_adozione.html.

the case law of the European Court of Human Rights and of the Administrative Law Division of the Council of State.¹⁰⁵ The Netherlands has now abandoned its earlier standpoint that interference in a person's family life could only occur if a residence permit aimed at exercising family life was revoked or not renewed. If the residence permit had a different purpose, its revocation was not regarded as interference in family life. In the context also of a modern migration policy, and partly inspired by the developments in case law in respect of Article 8 of the ECHR, the State Secretary of Justice announced on 15th October 2007 that, in anticipation thereof, the evaluation of applications for the extension of a regular residence permit for family reunification and family formation¹⁰⁶ will be simplified. This policy change means that a foreign national no longer has to demonstrate that they meet the income requirement. An application for renewal will only be rejected if the person has come to depend on public resources (*Work and Social Assistance Act (Wet Werk en Bijstand)*).

The new immigration law in **Portugal** expanded the scope of family reunification to include common-law couples. The concept of family member has also been expanded and now includes adult children dependant on the couple or on one of the spouses; those who are single and are studying in an educational establishment in Portugal; and minor siblings dependant on the migrant or spouse, as long as they are under the tutelage of the third country national resident in Portugal.

3.6 Integration¹⁰⁷

In September 2007, the [Migrant Integration Policy Index \(MIPEX\)](#)¹⁰⁸ was published, evaluating the integration policies in 25 EU Member States, as well as Canada, Norway and Switzerland, in regard to labour market access, family reunion, long-term residence, political participation, access to nationality and anti-discrimination. Another relevant report came from [PISA \(Programme for International Student Assessment\)](#)¹⁰⁹ looking at the education of *inter alia* migrant children.

¹⁰⁵ See previous Annual Policy Report 2006 for more details on this.

¹⁰⁶ *Family formation* means that the family ties were not created until the foreign national, with whom residence is being applied for, was already legally residing in the Netherlands.

¹⁰⁷ Further details on integration developments within the Member States may also be found in the *Third Annual Report on Migration and Integration* (COM(2007) 512), available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0512:EN:NOT>. This section should also be considered within the context of the *Common Agenda for Integration* (COM(2005) 389), available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0389:EN:NOT>.

¹⁰⁸ See <http://www.integrationindex.eu/>.

¹⁰⁹ See http://www.pisa.oecd.org/document/2/0,3343,en_32252351_32236191_39718850_1_1_1_1,00.html.

In **Austria**, in addition to the establishment of the Integration Platform,¹¹⁰ the [Austrian Integration Fund \(Österreichischer Integrationsfonds – ÖIF\)](#)¹¹¹ undertook a number of actions, in co-operation with other stakeholders, which included creating a project on mobile assistance for refugees and promoting professional training in the field of migration. Given the increasingly delicate nature of the public debate, a number of other organisations and associations across the broad political spectrum also developed position papers and/or expressed their concerns. These were the [Austrian Federation of Industries \(IV\)](#),¹¹² calling for the integration in the area of labour market; the [Consortium for Development Cooperation \(Arbeitsgemeinschaft Entwicklungszusammenarbeit – AGEZ\)](#),¹¹³ advocating *inter alia* equal rights and opportunities for migrants, as well as participation in social processes; the [Austrian Red Cross](#),¹¹⁴ with a focus on education; and the [Austrian Economic Chamber \(WKOE\)](#).¹¹⁵ The [Municipality Department 17 \(MA17\) of Vienna](#)¹¹⁶ is another important actor responsible for integration and diversity and organised a plenary discussion in 2007 dealing with the topic “Make Integration Measurable,” with the aim to develop a monitoring system to integration. In education, experts argued that poor results are obtained by migrant children owing to the fact that many children of migrants do not speak German or their mother tongue fluently. Consequently, the *Minister of Education, Art and Culture* suggested introducing a compulsory year in kindergarten for children with language deficiencies, which was opposed by the Green Party. Despite these discussions, the *Austrian Federal Economic Chamber* developed the project [“Schlaumäuse” \(“smart mice”\)](#),¹¹⁷ in cooperation with Microsoft Austria, to train children in kindergarten in a playful way in order to improve their German language skills. Elsewhere, the *Austrian Police* aims to raise its percentage of police officers who have a migration background. A debate on mosques and minarets also occurred, with the then governor of Carinthia, Jörg HAIDER, declaring that mosques and minarets were an interference with the public view of local places (Ortsbild). In order not to breach the freedom of religion, which is guaranteed by the Austrian constitution, a special commission for care of local places (Ortsbildpflege-Sonderkommission) was established, which must prove whether

¹¹⁰ See Section 2.4.

¹¹¹ See <http://www.integrationsfonds.org/cms/>.

¹¹² See <http://www.iv-net.at/blm50>.

¹¹³ See <http://www.oneworld.at/AGEZ/>.

¹¹⁴ See <http://old.rotekreuz.at/33.html>.

¹¹⁵ See <http://portal.wko.at/wk/startseite.wk>.

¹¹⁶ See <http://www.wien.gv.at/english/social/integration/index.html>.

¹¹⁷ See <http://www.microsoft.com/austria/education/schlau.msp>.

or not the construction of a mosque or a minaret is disturbing the public appearance of localities and if it is in accordance with “Austrian culture”.

One of the most important changes to the *Aliens Act* in **Estonia** was the integration requirement when applying for the status of long-term resident, in accordance with Council Directive 2003/109/EC. This entered into force on 1st June 2007. Specifically the requirement is to have a basic knowledge of the Estonian language, although there were some exceptions to this requirement for those who had been living in Estonia for significantly more than five years. In education, a change took place in relation to the transition of schools with Russian language education to partial Estonian language studies.

In **Germany**, amendments to Chapter 3 of the *Residence Act* (promotion of integration), were carried out with the *Directive Transposition Act*. The principle of “support and empowerment” was introduced by the new regulations in order to establish that foreigners with a perspective for a right to remain are also expected to do something towards their own integration, in addition to receiving state integration promotion. Successful participation in the integration course was also determined as a statutory goal, whose scope was expanded to include Jewish immigrants and Germans in need of integration. The [“Concept for a national integration course”](#)¹¹⁸ was mooted on 15th May 2007, following production of an initial draft by the Federal Office. On 21st November 2007, the Federal Government adopted a new version of the [“Ordinance on the Implementation of Integration Courses for Foreigners and Ethnic German Resettlers”](#)¹¹⁹ which provides for greater efficiency for the language and orientation courses, as well as for flexibility in adjustment to the needs of participants.

Ireland's *Agreed Programme for Government* (see [Section 2.3](#)) included measures for the development of a national integration policy; the appointment of a Minister of State to implement a national integration policy; the creation of an office to bring together officials from all government departments with responsibility for providing services for immigrants; to review language requirements across government and to increase the number of language support teachers to 1 800; to promote national anti-racism and diversity campaigns; to launch funding for education on the role of immigration in Irish society; and to support services

¹¹⁸ See

http://www.bamf.de/clin_092/nn_434548/SharedDocs/Anlagen/EN/Integration/Downloads/Integrationskurse/Kurstraeager/KonzepteLeitfaeden/konzept-fuer-einen-bundesweiten-integrationskurs-englisch-pdf-en.html.

¹¹⁹ See <http://www.bundesrecht.juris.de/intv/index.html>.

provided by non-governmental organisations active in the area of service provision to immigrants with a focus on educational, language and cultural needs of migrant workers. An [*Integration of Migrants Programme*](#)¹²⁰ with a budget of €36.25 million will support initiatives towards these goals. Anti-Racism measures are contained within the [*National Action Plan against Racism*](#)¹²¹ and the [*Programme for Social Economic Advancement of Members of the Traveller Community*](#).¹²² With regard to healthcare, the National Health Service Executive (HSE) undertook production of their [*National Intercultural Health Strategy 2007-2012*](#).¹²³ A review of the recruitment policy which aimed to increase ethnic diversity in the *Garda Síochána* (Police) took place after it emerged that only 11 out of an initial 7 000 applications from foreign applicants had progressed to the stage of Garda training in 2007. A review of the proportionately low progression rate for foreign applicants was announced, with one possible cause being poor English language skills. Elsewhere, in September 2007, a new non-denominational ‘Educate Together’ school opened in North County Dublin. Controversy surrounded the opening of this school because the majority of the new pupils were from non-Irish families and many had been unable to secure school places elsewhere. It was feared that this represented evidence of emerging segregation in the Irish education system.¹²⁴ In December 2007, the *Department of Education and Science* announced that three new Community Schools would open under the patronage of the *County Dublin Vocational Education Committee (CDVEC)*, a statutory body. This marked a significant turning point in education provision in Ireland as the schools would be inter-denominational in character, aiming to provide for religious education and faith formation during the school day for each of the main faith groups represented.

The Ministry of Interior in **Italy** produced a “[*Charter of citizenship and integration values*](#)”,¹²⁵ based on the common basic principle of integration being a two way process that engages nationals to welcome migrants and the latter to respect the rules of their host country. This charter was submitted to the various representatives of migrant communities. Dialogue

¹²⁰ See <http://www.justice.ie/en/JELR/Pages/PR07000247>.

¹²¹ See <http://www.diversityireland.ie/>.

¹²² See <http://www.justice.ie/en/JELR/Pages/PR07000247>.

¹²³ See

[http://www.hse.ie/eng/Publications/Social Inclusion, Asylum Seekers, Travellers/National Intercultural Health Strategy 2007 - 2012.pdf](http://www.hse.ie/eng/Publications/Social%20Inclusion,%20Asylum%20Seekers,%20Travellers/National%20Intercultural%20Health%20Strategy%202007%20-%202012.pdf).

¹²⁴ The Irish Times, 2007a. ‘*Hanafin denies racism in education system*’; The Irish Times, September 2007b. ‘*106 children left without school places in Dublin*’; The Irish Times, September 2007c. ‘*New Catholic school policy could produce unintended ‘apartheid’.*’; The Irish Times, September 2007d. ‘*State has duty to provide alternative to faith schools*’.

¹²⁵ See <http://tinyurl.com/cbot3l>.

with migrants following the Islamic faith took place with the framework of the Islamic Consultation Body, also promoted by the Ministry of Interior. During the second half of 2007, after some serious crimes were reported by the media, there were some strongly negative reactions against migrants. In order to address this, objective information was disseminated by a number of bodies, including producing for the “National Council for Economics and Labour,” research on relevant methodologies to measure the integration of immigrants¹²⁶ and organising in Rome, in collaboration with the German Embassy in Italy, as part of **Germany's** EU Presidency of the EU, an international conference on "Immigration and Integration".¹²⁷

Civic integration is one of the main priorities for the new government in the **Netherlands**. As well as the entry into force of the aforementioned *Civic Integration Act* (see [Section 3.7](#)), there was a review of the *Civic Integration Abroad Act*,¹²⁸ wherein a proposal to increase the fail/pass threshold was announced (effective from 15th March 2008). A major initiative was the announcement of a *Civic Integration Delta Plan*, whose aim is to reduce the waiting lists for civic integration and language courses and enhance civic integration: ‘participation’ in the broadest sense of the word. Additionally, the government announced in November 2007 their policy intentions up to and including 2011 focussing on two main themes: social emancipation and social integration. As well as a number of policy priorities resulting from these themes, focus was also placed on the integration of the growing number of East Europeans who, as a result of the expansion of the European Union, are settling either temporarily or permanently. Some further developments in the proposal for the banning of the wearing of a burka (announced in the Annual Policy Report 2006) also occurred. Whilst the government stipulated that face-covering clothing may be prohibited for the protection of the public order and safety, no official standpoint or concrete proposals on this issue were formulated.

After extensive public debates in **Portugal**, *Cabinet Resolution No. 63A /2007* of 3rd May 2007 on the *National Plan for the Integration of Immigrants (PII)* was approved. The PII seeks to stimulate the participation of immigrants in the conception, development and

¹²⁶ See

[http://www.portalecnel.it/Portale/documentiAltriOrganismi.nsf/0/C1256C5A0028856BC12572AB004CAB3A/\\$FILE/Indici%20Integrazione%20immigrati%20-%20IV%20e%20V%20Rapporto.pdf](http://www.portalecnel.it/Portale/documentiAltriOrganismi.nsf/0/C1256C5A0028856BC12572AB004CAB3A/$FILE/Indici%20Integrazione%20immigrati%20-%20IV%20e%20V%20Rapporto.pdf).

¹²⁷ See http://www.rom.diplo.de/Vertretung/rom/it/06/Immigrationskonferenz/neu_konferenz_seite.html.

¹²⁸ See

http://www.minbuza.nl/en/welcome/comingtoNL.visas_x_consular_services/civic_integration_examination_abroad.html.

evaluation of immigration policies, systematising the sectorial objectives and commitments of the Portuguese State to host and integrate immigrants. To this effect, it lists a total of 123 measures to be implemented by the end of the present legislature, involving 13 ministries. Related to this, the [National Action Plan for the European Year of Equal Opportunities for All](#)¹²⁹ was approved in January 2007, which seeks to promote equality and non-discrimination, raising awareness amongst the population about the benefits of a more just and supportive society, with equal opportunities irrespective of an individual's gender, ethnic origin, religion or beliefs, abilities, age and sexual orientation. In terms of legislative developments, [Law No. 59/2007](#)¹³⁰ of 4th September 2007 expanded the qualification of the crime of homicide to include crimes motivated by racial, religious or political hatred, or hatred caused by the victim's colour, ethnic or national origin, gender or sexual orientation. The political participation of immigrants in Portuguese society was also a subject of debate, especially with regard to the conditions and circumstances of expanding the right to vote for immigrants.

The [Forum for the Social Integration of Immigrants](#)¹³¹ in **Spain** is the Government's consultation, information and advisory entity for matters related to the integration of immigrants. The Forum contributed to the [Strategic Plan for Citizenship and Integration 2007 – 2010](#),¹³² which was adopted by the government in February 2007. The plan has been allocated €2 billion in funding for the entire period and is structured around twelve areas of action: reception, education, employment, housing, health, social services, infancy and youth, equal treatment, women, raising awareness, participation, co-development and joint development. The areas with the largest budget are reception, education and employment. Within this framework, the National Integration Fund backs integration policies implemented by the regional and local governments, based on annually assessed action programmes. Further financial instruments for integration policies include a funding line for innovative programmes implemented by local authorities and for reception and integration programmes implemented by NGOs.

¹²⁹ See www.portugal.gov.pt/NR/rdonlyres/6FE5AA2B-B042-4F2A-AEAE-8AEB100D4830/0/PNA_AEIOT.pdf.

¹³⁰ See www.dre.pt/pdf1sdip/2007/09/17000/0618106258.PDF.

¹³¹ See <http://www.mtin.es/es/migraciones/Integracion/Foro/index.htm>.

¹³² See <http://www.mtin.es/es/migraciones/Integracion/PlanEstrategico/indice.htm>.

During 2007, the Government in **Sweden** prepared an [Anti-Discrimination Bill](#)¹³³ which merges the existing anti-discrimination laws into one single Act. The new Act is proposed to cover not only sex, ethnicity, religion and other beliefs, sexual orientation and functional disability, but also gender identity and age, both of which have not previously been explicitly covered by non-discrimination legislation. The Government also launched a special integration package with a combination of measures that together aim to promote a speedier entry into the labour market. For example, public employment offices can now ensure that newly arrived immigrants are offered an assessment of their previous professional experience; resources have been allocated for supplementary courses for immigrants with foreign university education in law and health and medical services; Swedish municipalities are encouraged to smooth the progress of newly arrived refugees and to encourage them to become self-sustaining through a special bonus system; ‘Step-in’ jobs have been introduced, targeting newly arrived refugees and consisting of subsidised employment in the private or public sector combined with Swedish language studies; and many of the selective labour market schemes have been replaced with a general subsidy of payroll costs for people excluded from the labour market. Another development was the application in the public sector, on a trial basis, of recruitment based on anonymous applications. The method was employed due to its potential for reducing the risk for unfair treatment by considering only objective grounds for decisions.

Language and citizenship knowledge testing for all settlement applications was introduced in the **United Kingdom**. As of 2nd April 2007, all applicants for indefinite leave to remain (settlement) were required to provide evidence that they had either passed the new [Life in the UK](#)¹³⁴ test or the [English for Speakers of Other Languages \(ESOL\)](#)¹³⁵ test that includes also knowledge of citizenship.

3.7 Citizenship and Naturalisation

Following the entry into force of an amendment to the *Citizenship Act* in **Austria**, the number of naturalisations declined considerably in 2007, to a total of 14 010 (7 600 women and 6 410 men). This is a decline of 46% compared to the figure of 2006 (25 746). The tightening of the

¹³³ See http://www.manskligarattigheter.gov.se/extra/pod/?id=85&module_instance=2&action=pod_show.

¹³⁴ See <http://www.lifeintheuktest.gov.uk/>.

¹³⁵ See http://www.direct.gov.uk/en/EducationAndLearning/AdultLearning/ImprovingYourSkills/DG_10037499.

Citizenship Act provoked criticism by a number of migration experts, arguing that high barriers to naturalisation aggravate social integration.

The previously mentioned *Directive Transposition Act* in **Germany** also carried out amendments to the *Nationality Act* (*Staatsangehörigkeitsgesetz – StAG*). The major amendments related to the acquisition of nationality, the preconditions for naturalisation, provisions on multiple nationality, as well as amendments to procedural law. The preconditions for naturalisation were determined with regard to the linguistic requirements and modified with regard to knowledge of the legal and social order of Germany. These requirements were determined nationally for the first time. Documentation of knowledge of German has now become a precondition for the acquisition of German nationality and livelihood must in principle be earned without falling back on social or unemployment assistance. In addition, more stringent prerequisites have been introduced as to obedience to the law. The amended *Nationality Act* also permits all EU and Swiss citizens to be naturalised without having to renounce their previous nationality. Conversely, Germans also no longer lose German nationality if they acquire the nationality of another EU State or of Switzerland. A formal oath of allegiance, which gives a ceremonial framework for naturalisation, was also introduced.

Some 8 003 applications for naturalisation were received in **Ireland** in 2007, representing a 13% increase on the previous year, with 1 501 naturalisation certificates and 3 148 post-nuptial citizenship certificates issued. In December 2007, a number of media reports stated that under new draft legislation, migrants who wished to become Irish citizens will have to reach a minimum standard in English and/or ‘reasonable competence’ for communicating in English or Irish. Another continuing issue facing the Government during 2007 was the persistent backlog in citizenship applications, with processing times, in some cases, cited as taking several years to process to completion. In early 2007, a scheme was announced for renewal of leave to remain from the non-national parents of Irish born children granted leave to remain under the *Irish Born Child (IBC/05) Scheme*.¹³⁶ Processing of applications for renewal of this permission to remain in the State commenced in January 2007 and by the end of 2007, some 14 035 applications for renewal had been received, with 13 697 granted positive decisions. There were a number of legal challenges against refusal decisions under

¹³⁶ See Annual Policy Report 2006 for more details and <http://www.inis.gov.ie/en/INIS/IBC05Renewal.pdf/Files/IBC05Renewal.pdf>.

the IBC/05 administrative scheme. In November 2006, in a number of test cases, the High Court overturned the Minister's decision refusing permission to remain, on the grounds that the Minister was required, but had failed, to consider the constitutional and convention rights of the Irish-born children prior to making the decision. However, in December 2007, the Supreme Court overturned the decision of the High Court in relation to its findings in the series of test cases, (*Bode [A Minor] -v- Minister for Justice, Equality & Law Reform & Ors*), which recognised the fundamental power of the State to control the entry, residence and exit of foreign nationals.

There were 38 466 cases for acquisition of citizenship in **Italy** during 2007, approximately twice the number from more than three years ago. Despite the growing trend, **Italy** still registers one of the lowest rates of naturalisation in the EU. Several draft laws were discussed during the year in order to reduce the years of continuous residence and to repress eventual cases of “marriages of convenience.” The marriage of a national of Italy with a third country national, however, are now a structural pillar of contemporary Italian society, representing on average as much as one marriage in every four in some industrial regions of Northern Italy.

Dual citizenship is a pending matter in **Latvia**, because many of its nationals now reside abroad. In the context also of promoting the return of its nationals and strengthening the connection with Latvia, an initiative was launched in the framework of a Working Group, consisting of representatives from relevant government Ministries, on the possibilities for children who were born abroad to receive dual citizenship, which may result also in amendments to the relevant national legislation. Other developments included the adoption and entry into force of *Regulation 353*, defining the unified examination procedure for verifying Latvian language skills and the knowledge of persons who wish to receive the citizenship of Latvia. Another *Regulation (354)* defined the procedure for applications on the recognition of a child as a national of Latvia.

A total of 27 100 applications for naturalisation were made in the **Netherlands** in 2007 (a slight decrease from 2006 when it was 28 200). Decisions were made on 26 650, with 1 300 applications under review. Including these applications for review, 81% were positive decisions (83% in 2006). The subject of dual nationality featured prominently on the political agenda during the formation of the new government, following the announcement of two Ministerial candidates for State Secretary having another nationality in addition to their Dutch

nationality. During a parliamentary debate, the Freedom Party (PVV) made it clear that it was strongly opposed to their appointment and submitted a motion, which was not supported by any other party, to make it impossible for Dutch citizens with dual nationality to become a Member of Parliament or of the government. The PVV also submitted another motion, again not supported by any other party, of no confidence against the two candidates for State Secretary. In December 2007, the government withdrew a legislative proposal for limiting multiple nationalities, in order to be able to deal with multiple nationalities differently. The government now plans to introduce an obligation to relinquish one's original nationality for adults who were not born in the Netherlands, but who have lived here since the age of four and who want to avail themselves of the resulting right to become Dutch citizens. The government also plans to introduce the possibility of revoking Dutch citizenship, for example, if someone is convicted of terrorist crimes or crimes committed with a terrorist purpose. In another development, the entry into force of the new *Civic Integration Act*¹³⁷ on 1st January 2007 meant that the naturalisation test was no longer a requirement for applicants who apply for naturalisation on or after 1st April 2007, as these applicants will have to pass the civic integration examination.

The change to the nationality law in **Portugal** in 2006, outlined in the Annual Policy Report 2006, reinforced the principle of *ius soli* and the effective connection of individuals to Portuguese territory. Following its entry into force on 15th December 2006, its effects were visible in the number of applications for Portuguese nationality submitted in 2007 with requests for acquiring Portuguese nationality increasing from approximately 4 000 in 2006 to approximately 19 000 in 2007. This change in the law and its impact, was the subject of a parliamentary debate, where it was affirmed that this legal regime had enabled a just and balanced solution to an essential question for the integration of immigrants, which had been identified a long time ago by different sectors of Portuguese society and by foreign resident communities.

The main development in **Spain** was the adoption of the *Additional Provision Five of Law 52/2007*,¹³⁸ which recognises and extends rights and establishes measures in favour of those who were persecuted or suffered violence during the Spanish civil war and the dictatorship. This Provision will enter into force on 27th December 2008 and concerns persons whose

¹³⁷ See http://www.ind.nl/en/inbedrijf/overdeind/veelgesteldevrage/Wet_inburgering_naturalisatie.asp.

¹³⁸ See <http://www.boe.es/boe/dias/2007/12/27/pdfs/A53410-53416.pdf>.

father or mother was Spanish by birth and the grandchildren of those who lost or were forced to renounce their Spanish nationality due to exile. Another development was in the INSTRUCTION OF 26th JULY 2007 from the *General Directorate of Registries and Notaries* on processing applications for Spanish nationality due to residence. This instruction aims to improve and standardise the formalities of the files for acquiring Spanish nationality due to residence, eliminating the requirement of the foreigner applying for Spanish nationality to submit the residence certificate, as long as he or she provides the document issued by the Spanish authorities as a resident foreigner (Foreigner Identification Card, European Union Family Member Residence Card, Certificate from the Central Registry for Foreigners).

3.8 Illegal Immigration

The number of cases and people who have entered **Austria** illegally has decreased significantly in comparison to previous years. The main reason for such a development is that nationals of **Romania** can enter the country more easily as a result of EU accession on 1st January 2007. Prior to this, nationals of **Romania** constituted the largest group of persons who were detained for illegal entry or illegal residence. Furthermore, owing to the effects of the *Aliens' Law Package 2005* and the better cooperation between Austria and its neighbouring countries, including other transit countries, the number of persons who were smuggled has decreased by 21%. Drehscheibe,¹³⁹ a department of the City of Vienna helping trafficked children, reported that the number of under-aged victims is continuously decreasing. The main reason for this is the identification of the children and the improved cooperation both with the police and the crisis centres in the country of origin, mainly in **Romania** and Bulgaria.

Much media attention was given in **Belgium** to the case of Ana Cajamarca and her daughter Angelica (11 years old at the time) who were detained on 30th June 2007 because they had been living illegally since 2003.¹⁴⁰ They were both held in a detention centre awaiting their removal to Ecuador. Lawyers and action groups argued that it was inhuman to lock up a child in a detention centre and the case was headline news for several days, also because of the comments and the visit to the detention centre of Ecuador's president, Rafael Correa and his Belgian spouse, Anne Malherbe. A Brussels court issued an injunction against their forced

¹³⁹ See <http://www.wieninternational.at/de/node/4170> or http://www.iomvienna.at/files/Upload/Drehscheibe_engl.pdf.

¹⁴⁰ See, for example, <http://news.bbc.co.uk/2/hi/europe/6921936.stm>.

removal, whilst the mother and daughter were on route to board a plane for Ecuador, and they were released soon afterwards.

A total of 13 persons were found to be staying illegally in **Estonia** during 2007 as a result of operational raids undertaken by the *Citizenship and Migration Board's (CMB)* migration surveillance officials. Apart from this, 233 precepts to legalise and 138 precepts to leave were also made to persons staying illegally in the country by CMB officials. At the border, the *Estonian Border Guard Administration* identified 41 illegally-entering immigrants and discovered 35 cases of illegal immigration. The main ways for illegal immigration, according to the Border Guard, are the use of falsified documents; illegal border crossings in areas between the border inspection points; and entry into Estonia for the alleged purposes of tourism, but then leaving with falsified documents or illegally-staying and/or working in Estonia. The most illegal immigrants came from Moldova (9), Russia (7) and Ukraine (6). According to the experiences of the Border Guard Administration, the risk of illegal immigration is decreased by the common information system of the Schengen countries, where the emphasis is placed on information collection and analysis and cooperation with the local population, municipalities and authorities.

Following a brutal murder in October 2007 by a national from another EU Member State, the Government of **Italy** launched a decree proposing to extend the policy of removals to include also illegally-residing EU nationals. In particular, the Ministry of Interior gave local prefects the task of issuing removal orders on the grounds of public safety jurisdiction.¹⁴¹ In late December 2007, the Government launched a second decree (the so called “[Security Act](#)”¹⁴²) containing rules for the removal of EU citizens on the grounds of public safety and founded suspicions of terrorism. At the end of the year, **Italy** also signed a co-operation protocol with the government of Libya to address the phenomenon of illegal immigration.

One of the concrete intentions of the new government in the **Netherlands**, and a long-cherished wish of the left-wing opposition under the previous government, was the realisation

¹⁴¹ See

http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/immigrazione/0989_2007_10_12_Ordinanza_PCM_rifugiati.html 684598698.html and <http://www.parlamento.it/leggi/decreti/07181d.htm>.

¹⁴² See

http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/sicurezza/0996_2007_12_29_decreto_espulsioni.html.

of a pardon scheme for asylum applicants who have exhausted all legal remedies and who applied for their asylum under the old Aliens Act (from before 1st April 2001). Following extensive political debate and negotiations, including the conclusion of an agreement with municipalities, the so-called *Settlement of the Legacy of the “old” Aliens Act Scheme* ultimately came into effect on 15th June 2007. Expectations at the beginning of 2007 were that between 25 000 and 30 000 foreign nationals would be eligible for the scheme, and, on 28th January 2008, an offer to approximately 25 000 foreign nationals had been made, to which around 21 000 responded positively. Criticism, particularly from the right-wing opposition, was made on the amount of the direct and indirect costs of the scheme, as well as the possible ‘attraction effect’. The main criticism, however, was that this scheme rewards foreign nationals who have broken the law by not leaving the Netherlands in spite of one or more definite rejections of their asylum application(s). The State Secretary of Justice responded that, in the opinion of the government, there were strong arguments in favour of the scheme and that this did not result in legal inequality. In another development, in October 2007, the government submitted a legislative proposal for streamlining the financing of essential medical care to illegally-resident migrants. The legislative proposal regulates the provision of contributions from the government to healthcare providers who lose income as a result of providing essential medical care to migrants who do not have access to social security facilities, who are unable to pay the healthcare provider, and who do not have medical insurance. For providers to be eligible for payment, the medical care must be essential, and on 19th December 2007, the [Klazinga Commission](#)¹⁴³ issued advice as to what constitutes essential medical care.

During the period 2004 and 2007, and as part of the responsibilities of the Ministry of the Interior, a number of measures have been undertaken in **Spain** to improve the management of immigration and alien affairs, as well as activities related to the Ministry’s responsibilities in these areas. As well as the creation of the aforementioned ([Section 2.5](#)) *General Directorate of International Relations and Alien Affairs*, these measures included further deployment of Interior Liaison Officers to countries on the west coast of Africa; signing Co-operation Agreements with 10 African countries, in particular with Morocco to tackle illegal immigration; plus reinforcing border controls and improving the efficiency of the law enforcement bodies in controlling illegal immigration, with an increase in the number of

¹⁴³ Further details given at <http://www.pharos.nl/supernavigatie/english/383?pagina=4>.

personnel. In addition, actions with other Member States co-ordinated by FRONTEX also took place, which has resulted, since 2006, in the detection of 12 864 migrants who attempted to enter Spain illegally aboard 155 vessels. Despite the great difficulties involved in managing borders and the evidently dramatic images in the media from the Canary Islands, the specific measures implemented by the Spanish authorities are widely considered to be treating these migrants in a humane manner.

In March 2007, the **United Kingdom** Home Office announced a new strategy to ensure and enforce compliance with its immigration laws. The Home Office followed up this strategy by consulting on the implementation of a new system of civil penalties for employers of third country nationals working illegally in the United Kingdom. Legislation to introduce fines on a sliding scale of up to £10 000 (approx. €12 000) per illegal worker was debated by Parliament on 13th December 2007, and the laws subsequently adopted in February 2008. The Home Office and Department of Health also initiated a joint review of the laws governing migrants' access to free National Health Services in England.

3.9 Actions against Human Trafficking¹⁴⁴

The most important development in this respect in **Austria** was the adoption of the *National Action Plan against Trafficking in Human Beings* (*Nationaler Aktionsplan gegen Menschenhandel*)¹⁴⁵ by the Council of Ministers in March 2007. In accordance with this Action Plan, the *First Austrian Report on Combating Human Trafficking*¹⁴⁶ was prepared, giving an overview of current activities and measures that Austria has launched, and is planning to take, with respect to human trafficking, such as raising public awareness through different events, discussions, etc; sensitizing the police and the systems of border control; and the establishment of new intervention centres for victims of trafficking in the provinces. Additionally, the Ministry of Interior, in cooperation with the International Organisation for Migration (IOM), launched a project on “*Development of Guidelines for the Collection of Data on Trafficking in Human Beings, including Comparable Indicators*.”¹⁴⁷

¹⁴⁴ The actions undertaken at Member State level may also be seen in the context of the *EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings* (2005/C 311/01), see [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005XG1209\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005XG1209(01):EN:NOT).

¹⁴⁵ See http://www.kinderrechte.gv.at/home/upload/50%20thema/tm_0810_mh-bericht_letzte_version_080804.pdf.

¹⁴⁶ See <http://www.bmeia.gv.at/en/foreign-ministry/foreign-policy/human-rights/main-human-rights-issues/combating-human-trafficking.html>.

¹⁴⁷ Available from http://www.emn.at/modules/typetool/pnincludes/uploads/IOM_Vienna_AT_MoI_Guidelines%20for%20the%20Collection%20of%20Data%20on%20THB.pdf.

In **Estonia**, 135 crimes which might be related to human trafficking were registered in 2007, the same as in 2006, although no temporary residence permits were issued to such victims in accordance with [Council Directive 2004/81/EC](#).¹⁴⁸ An important amendment of the Penal Code was made which expanded, on the basis of the definition of human trafficking of [Council Framework Decision 2002/629/JHA](#),¹⁴⁹ the term “enslaving” to include also the “helpless condition” of the victim or abusing the dependence of the guilty party, in addition to violence or fraud. Other developments included the Ministry of Justice, in cooperation with the Ministries of Interior, Social Affairs and Foreign Affairs undertaking an analysis of the [Council of Europe Convention on Action against Human Trafficking](#),¹⁵⁰ with a view to becoming a signatory in 2008. An information campaign was also undertaken for both consular officials, to be trained on the issue of victim recognition and assistance, and an awareness campaign for high schools.

As well as the previously-mentioned public consultation in **Ireland** on developing an Action Plan to combat trafficking, the *Criminal Law (Human Trafficking) Bill 2007* was also published and Ireland became a signatory to the above-mentioned *Council of Europe Convention on Action against Human Trafficking*.

In **Italy**, an “[Observatory on Prostitution](#)”¹⁵¹ was created at the *Public Security Department of the Ministry of Interior*. This Observatory, involving also institutional and social representatives, is responsible for studying and deepening the comprehensive system to prevent and combat such phenomena, as well as measures of assistance, protection and protection of victims. Moreover, in order to prevent trafficking, a more consistent application of [Article 18 of the Consolidated Text on Migration](#),¹⁵² regarding the recovery of exploited persons, was made.

The combating of human trafficking and smuggling is a priority of the Police and Justice services in the **Netherlands**. In 2007, a number of successes were achieved in this area, often

¹⁴⁸ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:NOT>.

¹⁴⁹ See [http://eur-](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629&model=guichett)

[lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0629&model=guichett).

¹⁵⁰ See http://www.coe.int/t/dg2/trafficking/campaign/default_EN.asp.

¹⁵¹ See Observatory on Prostitution First Report Synthesis available from www.interno.it/mininterno/export/sites/default/it/assets/files/14/0685_Sintesi_Conclusione_Relazione_Osservatorio.doc.

¹⁵² See http://www.interno.it/mininterno/export/sites/default/it/assets/files/14/0963_ART.18T.U_immigrazione.pdf.

in collaboration with the authorities in other countries, such as the arrest of a Somali national suspected of being one of the organisers of a people smuggling ring; the arrest of twelve suspects (also in **Germany**) in an investigation into a comprehensive network of internationally operating Turkish women traffickers; some twenty arrests and house searches in the Netherlands, the United States, **United Kingdom, Belgium, France, Germany** and **Spain** in an investigation into human trafficking relating to asylum-seeking minors from Nigeria; and the arrest of four suspects for smuggling Chinese nationals into the **United Kingdom**. The Dutch government considered a possible expansion of their so-called B9 scheme.¹⁵³ This scheme grants foreign nationals, who co-operate with the investigation and prosecution of human traffickers, temporary residence (in compliance also with the aforementioned Council Directive 2004/81/EC). The possible expansion was the granting of an independent residence permit after three years' consecutive residence (on the basis of a B9 permit) and granting residence (on the basis of the B9 permit) to victims who do not report human trafficking but who co-operate in the investigation and prosecution in some other way, for instance by making a statement or acting as a witness.

Via [Resolution 81/2007 of 22 June 2007](#),¹⁵⁴ the government of **Portugal** approved its *National Plan Against Human Trafficking for 2007/2010*. This plan contains a global and co-ordinated strategy to combat this phenomenon in its various dimensions, by sharing responsibilities amongst diverse governmental and civic entities. Aware of the most vulnerable victims of this complex phenomenon, namely women and children, the plan has an integrated approach, combining the repressive aspect of combating this kind of criminal activity with strategies for prevention and strategies offering support and inclusion for victims with a view to safeguarding human rights. Legislation in respect to granting residence permits to victims of human trafficking was also approved,¹⁵⁵ defining the special circumstances that justify the granting of this protection to these victims, irrespective of the investigation and suppression of human trafficking, the abetment of illegal immigration and the victim's desire to collaborate in such an investigation. An awareness campaign about Human Trafficking also began, with the presentation of the Portuguese version of the European Council publication "*You are not for sale*", entitled "[Não estás à venda](#)."¹⁵⁶

¹⁵³ Details published in the **Netherlands** Parliamentary Papers II 2007/08, 19 637, no. 1174 (Letter).

¹⁵⁴ See <http://dre.pt/pdf1sdip/2007/06/11900/39383949.PDF>.

¹⁵⁵ Decree-Law No. 368/2007, see <http://dre.pt/pdf1sdip/2007/11/21200/0800808008.PDF>.

¹⁵⁶ See <http://www.nao-estas-a-venda.sef.pt/index.html>.

An amendment to the *Aliens Act* occurred in **Sweden** regarding the criteria for the granting and withdrawal of time-limited residence permits for a person who co-operates with the authorities during an investigation or main hearing concerning the crime of trafficking. The amendment means that a time limited residence permit of six months may, upon application from the person in charge of a preliminary investigation, be granted to an alien staying in Sweden if this is deemed necessary in order to carry out a preliminary investigation or a main hearing in a criminal case. Before granting such a permit, the alien may be granted a residence permit for 30 days (reflection period) in order to decide whether or not to co-operate with the competent authorities.

The **United Kingdom** signed the *Council of Europe Convention on Action against Human Trafficking* and published its [Action Plan on Tackling Human Trafficking](#).¹⁵⁷ In October 2007, [Operation Pentameter 2](#)¹⁵⁸ was launched, the largest ever police-led multi-agency enforcement campaign to combat human trafficking for sexual exploitation. In December 2007, the United Kingdom co-hosted with the Council of Europe, a regional seminar on trafficking in human beings, which included representatives from eight other Member States. The aim of the seminar was to share expertise and best practice on issues such as victim identification, reflection and residence permits and support for victims of forced labour.

3.10 Return Migration¹⁵⁹

According to the Aliens' Police in **Austria**, 7 280 refusals were executed during 2007, with illegal entry (5 065) being the main reason. Additionally, 1 673 removals were carried out, the main cause being illegal residence. Moreover, 6 600 persons were placed in Detention Pending Deportation, with finally 2 831 removals carried out. With regard to assisted voluntary return, 7 536 were registered by the Ministry of Interior. The so-called 'problematic deportations' were reported on by the [Human Rights Advisory Board](#)¹⁶⁰. The *Prison Administration Act (Strafvollzugsgesetz, StVG)* was reformed in **Austria** in December 2007, which allowed a sentenced foreign national, having served at least half of their prison term, to be released earlier if they then immediately return to their country of origin. By the beginning

¹⁵⁷ See <http://www.homeoffice.gov.uk/documents/human-traffick-action-plan>.

¹⁵⁸ See <http://www.pentameter.police.uk/>.

¹⁵⁹ The EMN has previously undertaken a study on "Return Migration" (ISBN 978-92-79-07792-0) and in 2009 will complete a study on *Programmes and strategies in the EU Member States fostering Assisted Return to and Re-integration in Third Countries*.

¹⁶⁰ See http://www.menschenrechtsbeirat.at/cms/index.php?option=com_content&task=view&id=111&Itemid=165.

of August 2007, 8 945 persons were detained in prisons according to official statistics, of which approx. 1 900 – 2 000 were third country nationals. Certain preconditions must be fulfilled (e.g. a residence ban is imposed upon the third country national) and the return to the country of origin should be of a voluntary nature. However, the departure has to be supervised in order to ensure that the person has actually left the country.

A total 113 persons in **Estonia** received support for return in 2007, mainly being elderly persons living alone who wished to settle with their relatives in other countries, primarily to Russia (89 persons), to Ukraine (12 persons) and Byelorussia (8 persons). There were also some 144 returns of Estonian nationals to Estonia, supported by the government through the [Estonian Migration Foundation](#).¹⁶¹

In **Ireland**, 417 persons opted to be assisted to return home voluntarily in 2007, a substantial increase from 2006 when 238 persons sought assisted voluntary return. With regard to Forced Return, 135 Deportation Orders to non-EU countries were effected in 2007. In addition, 225 Dublin II transfers to other Member States occurred, 66% of the total transfer orders signed. For the first time, EU nationals were removed in accordance with [Regulation 20\(1\)\(a\) of the European Communities \(Free Movement of Persons\), \(No 2\), Regulation 2006](#),¹⁶² with Removal Orders made against nine persons, of which four were removed to other EU Member States.

Return migration policy continued to be a priority for the new government in the **Netherlands**, with its objectives being to increase the effectiveness of the return migration policy and of the controlled departure of foreign nationals who are not/no longer legally entitled to stay. The foreign national is encouraged to leave independently, but if necessary an enforced departure will be realised and the previously mentioned *Repatriation and Departure Service (DT&V)* ([Section 2.5](#)) plays an important role in this. Return migration policy was also given particular attention in the formulation and implementation of the previously-mentioned *Settlement of the Legacy of the 'old' Aliens Act Scheme* ([Section 3.8](#)), particularly in the agreement with the Dutch Municipalities. With regard to the execution of returns, on 28th August 2007, the independent *Supervisory Commission for Royal Constabulary Deportations (Commissie van Toezicht Uitzettingen Koninklijke Marechaussee)* presented the

¹⁶¹ See http://www.migfond.ee/ee/uudised_en.php?action=view&id=23.

¹⁶² See <http://www.inis.gov.ie/en/INIS/SI656of2006.pdf/Files/SI656of2006.pdf>.

results of its study into the allegations made in a television programme the previous year. It concluded that there is no ‘systematic excessive use of violence’; however, ‘occasional improvised violence’ is sometimes used in removals. A number of recommendations for improvements were made, to which the government responded positively. The implementation of a special accommodation facility for families with children who are co-operating in their removal was also reported on by the government.

A partnership between the *Serviço de Estrangeiros e Fronteiras (SEF)* of **Portugal** and the *International Organisation for Migration (IOM)* was implemented, known as [Project SuRRIA](#).¹⁶³ Its main objective was to create a decentralised network of information and support for immigrants who intended to return of their own accord to their countries of origin, and can be identified as a good practice in the context of migrant return.

Returns in **Spain** are implemented within the context of re-admission agreements, of which some 20 exist between Spain and third countries. Some of them include technical assistance for the Authorities in the country of origin. Also Co-operation Framework Agreements have been reached related to immigration (such as those signed with Gambia, Guinea-Conakry and Cape Verde, to assist in the area of assisted voluntary return, promote legal hiring, policy and operational assistance in the fight against illegal immigration, etc.). In terms of voluntary returns, organised by NGOs and the IOM with subsidies from the government, some 1 184 occurred in 2007 (958 in 2006) at a cost of €1 694 109 (€1 441 259 in 2006).

In August 2007, **Sweden** introduced an economic reestablishment support for persons (from certain countries) whose application for a residence permit was turned down. This support was established to facilitate return to countries where the pre-conditions to be able to re-establish oneself are limited. Currently, nationals of Iraqi, Afghanistan and Somalia returning voluntarily are among those eligible, although the interest was limited, with only 102 applications submitted. Of these, 17 were granted. With regard to re-admission agreements, the governments of Afghanistan and Sweden, together with the UNHCR, signed an agreement outlining the terms for the voluntary return of Afghans from Sweden. The *Tripartite Memorandum of Understanding (MoU)* was endorsed in June 2007 and the agreement is valid until 31 December 2008.

¹⁶³ See http://www.acidi.gov.pt/modules.php?name=FAQ&myfaq=yes&id_cat=2&categories=Retorno+Volunt%E1rio.

Following detailed discussions with the judiciary and with stakeholders, the **United Kingdom Border and Immigration Agency** implemented a change of policy on the handling of Judicial Review challenges to removal,¹⁶⁴ as part of a new enforcement strategy. Since March 2007, those facing removal are given at least three days notice of their removal (including two working days), but removal is deferred only if a Judicial Review is filed with the Court accompanied by detailed grounds of challenge. The published policy includes provision to give less than 72 hours notice in clearly defined circumstances. The new arrangements aim to discourage speculative claims designed simply to disrupt the removal process, and ensure that claimants do not benefit from lodging a weak claim. Additionally, and similar to events in **Austria**, there was much media and political debate on the issue of foreign national prisoners.¹⁶⁵ The *UK Borders Act 2007* contained automatic removal provisions placing a duty on the Secretary of State to make a Deportation Order when a foreign criminal (who does not fall within one of the exception categories listed under Section 33 of that Act) is sentenced to a term of imprisonment of 12 months or more or a custodial sentence of any length for a particularly serious crime. Any appeal against removal under this legislation can only be exercised from abroad, unless the foreign criminal has an arguable asylum or human rights claim. Automatic removal for those who receive a custodial sentence of 12 months or more was implemented in August 2008.

4. EU ASYLUM AND IMMIGRATION LEGISLATION

This section provides an overview of developments in respect to the adoption, transposition and/or experience in the implementation of [EU legislation](#)¹⁶⁶ in the field of asylum and immigration during 2007. Of particular note, see [Section 2.4](#), was the transposition in **Germany** of eleven EU directives on asylum and migration policy.

4.1 EU legislation adopted in 2007

In terms of EU asylum and immigration legislation adopted in 2007, these were:

¹⁶⁴ This is called Automatic Deportation in UK Law. Deportation orders do not have an expiry date and they remain valid unless they are revoked.

¹⁶⁵ See, for example, http://news.bbc.co.uk/2/hi/uk_news/politics/6378461.stm.

¹⁶⁶ See http://ec.europa.eu/justice_home/doc_centre/intro/docs/jha_acquis_1008_en.pdf for a complete listing of the EU Immigration/Asylum acquis.

4.1.1 Migration Statistics

- [Regulation \(EC\) No 862/2007](#)¹⁶⁷ of the European Parliament and of the Council of 11 July 2007 on *Community statistics on migration and international protection* and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199 of 31 July 2007, p. 23);

4.1.2 Re-admission Agreements

- [Council Decision 2007/341/EC](#)¹⁶⁸ of 19 April 2007 concerning the signing of the *Agreement between the EC and Russia on readmission*, OJ L 129 of 17th May 2007, page 40.
- [Council Decision 2007/839/EC](#)¹⁶⁹ of 29 November 2007 concerning the conclusion of the *Agreement between the European Community and Ukraine on readmission of persons residing without authorisation*;
- [Council Decision 2007/817/EC](#)¹⁷⁰ of 8 November 2007 on the conclusion of the *Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation*
- [Council Decision 2007/818/EC](#)¹⁷¹ of 8 November 2007 on the conclusion of the *Agreement between the European Community and the Republic of Montenegro on the readmission of persons residing without authorisation* -
- [Council Decision 2007/819/EC](#)¹⁷² of 8 November 2007 on the conclusion of the *Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation*
- [Council Decision 2007/820/EC](#)¹⁷³ of 8 November 2007 on the conclusion of the *Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation*

Whilst re-admission agreements with Ukraine and a number of Balkan states were concluded in 2007, they entered into force only in 2008. Visa agreements were also concluded with these countries at the same time. The re-admission agreement with Russia, however, entered into

¹⁶⁷ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0862:EN:NOT>.

¹⁶⁸ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0341:EN:NOT>.

¹⁶⁹ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0839:EN:NOT>.

¹⁷⁰ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0817:EN:NOT>.

¹⁷¹ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0818:EN:NOT>.

¹⁷² Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0819:EN:NOT>.

¹⁷³ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0820:EN:NOT>.

force on 1st June 2007, and also at the same time as a visa agreement ([Council Decision 2007/340/EC](#)¹⁷⁴). **Estonia** reported that in reality, the first persons to be taken back by Russia on the basis of this agreement occurred only in December 2007. The main problem being the absence of the implementation protocols for the readmission agreement. This agreement also simplifies the return of nationals of third countries who have arrived in the EU via Russia. In this respect, Russia has been given a three-year transition period. Initially, Russia will take back only nationals of third countries with whom it has a readmission agreement. **Latvia** completed the negotiations of its protocol with Russia and this was expected to be formally concluded in June 2008.

4.1.3 External Borders

- [Regulation \(EC\) No 863/2007](#)¹⁷⁵ of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of *Rapid Border Intervention Teams* and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers;
- [Council Decision 2007/511/EC](#)¹⁷⁶ of 15 February on the conclusion, on behalf of the Community, and on the provisional application of the Arrangement between the European Community and the *Republic of Iceland and the Kingdom of Norway* on the modalities of the participation by those States in the *European Agency for the Management of Operational Cooperation at the External Borders* of the Member States of the European Union
- [Council Decision 2007/512/EC](#)¹⁷⁷ of 15 February on the signing, on behalf of the Community, and on the provisional application of the Arrangement between the European Community and the *Republic of Iceland and the Kingdom of Norway* on the modalities of the participation by those States in the *European Agency for the Management of Operational Cooperation at the External Borders* of the Member States of the European Union

¹⁷⁴ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0340:EN:NOT>.

¹⁷⁵ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0863:EN:NOT>.

¹⁷⁶ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0511:EN:NOT>.

¹⁷⁷ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0512:EN:NOT>.

4.1.4 EU Funding

- [Council Decision 2007/435/EC](#)¹⁷⁸ of 25 June 2007 establishing the *European Fund for the Integration of third country nationals* for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows, (OJ L 168 of 28 June 2007, p. 18);
- [Decision 573/2007/EC](#)¹⁷⁹ of the European Parliament and of the Council of 23 May 2007 establishing the *European Refugee Fund* for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" and repealing Council Decision 2004/904/EC
- [Decision 574/2007/EC](#)¹⁸⁰ of the European Parliament and of the Council of 23 May 2007 establishing the *External Borders Fund* for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows"
- [Decision 575/2007/EC](#)¹⁸¹ of the European Parliament and of the Council of 23 May 2007 establishing the *European Return Fund* for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows"

As required by these Decisions, the Member States appointed leading authorities responsible for the production of Multi-Annual and Annual Programmes for each fund.

4.2 EU Legislative Proposals in 2007

With regard to new proposals for EU legislation, **Ireland** and **United Kingdom** announced that they would not participate in the adoption of the proposed directive providing for [sanctions against employers of illegally staying third-country nationals](#).¹⁸² The **United Kingdom** also announced that it would exercise its right not to opt-in to the proposed directive on the *conditions of entry and residence of third-country nationals for the purposes of highly qualified employment* (so-called "[EU Blue Card directive](#)"¹⁸³). Other proposals published in 2007 were for a directive on *a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State* (so-called

¹⁷⁸ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0435:EN:NOT>.

¹⁷⁹ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0573:EN:NOT>.

¹⁸⁰ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0574:EN:NOT>.

¹⁸¹ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0575:EN:NOT>.

¹⁸² COM(2007) 249, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0249:EN:NOT>.

¹⁸³ COM(2007) 637, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0637:EN:NOT>.

"[Framework directive](#)"¹⁸⁴); a *Proposal for a Council Decision establishing a [European Migration Network](#)*¹⁸⁵ and, in the context of asylum, for [amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection](#).¹⁸⁶ Given that the **United Kingdom** had not opted-in to Directive 2003/109/EC when it was originally adopted, they announced that they did not wish to opt-in to the (on-going) negotiations on the amendment of this latter proposal.

4. 3 Experiences in implementation of EU legislation

Some Member States reported on their experience in the implementation of EU legislation and its transposition into national legislation. [Table 1](#) gives an overview of the equivalent national laws which transposed a number of Directives in 2007.

The lack of clarity in the **Netherlands** about the scope of Article 15c of Directive 2004/83/EC (Qualification Directive) resulted in the *Administrative Law Division of the Council of State* asking preliminary questions in the *European Court of Justice* in the case of an Iraqi couple. The key question is whether Article 15c is intended to offer additional protection to foreign nationals compared to the existing protection pursuant to Article 3 of the ECHR, as it would then mean that the Directive contains a new ground for the granting of a permit in the Netherlands. The outcome of this request is pending. In the implementation of Directive 2004/82/EC (Passenger data) it was noted that the definition of 'external borders' in the Directive differs from the definition used in the Schengen Convention, the latter being incorporated in the *Aliens Act 2000*. In order to prevent a situation whereby, in violation of the Directive, the obligation to collect and pass on passenger data would also apply to transport from one of the Member States not belonging to the Schengen area, an exception is stipulated in secondary legislation. With regard to imposing fines (Article 4 of Directive 2004/82/EC), it was decided to impose a maximum fine of €16 750.

Whilst a formal evaluation of the implementation of the asylum and residence directives by the Federal Government of **Germany** has not yet taken place, a number of observations have been made. A uniform procedure to recognise refugee status and subsidiary protection was considered to be advisable with it being necessary to distinguish as to status (i.e. with regard

¹⁸⁴ COM(2007) 638, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0638:EN:NOT>.

¹⁸⁵ COM(2007) 466, see http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196066.

¹⁸⁶ COM(2007) 298, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0298:EN:NOT>.

to rights and benefits), between refugees, within the meaning of the Geneva Convention on Refugees, and beneficiaries of subsidiary protection. The distinction between protection criteria of refugees and those enjoying subsidiary protection would not be relevant if equal protection were prevalent among the legal consequences. When it comes to the criteria for the recognition of refugee status and of subsidiary protection status (also on condition of the evaluation of the transposition of the Directives), it would be necessary to give clearer guidelines and clarification, since it contains uncertain legal definitions and fails to provide clear definitions. For example, and referring also to the experience of the **Netherlands** above, Article 15c) of the Qualification Directive is considered to require more clarification, since its wording is subject to dispute as to the interpretation. As to the reception conditions of asylum applicants, the provisions to guarantee the material reception conditions should in principle be adjusted, including giving clearer guidelines, in order to avoid possible pull factors. A stronger unification of the regulations on asylum procedure would be welcomed, in particular to create a uniform list of safe countries of origin.

Individual asylum applicants sought to challenge transfer from the **United Kingdom** to other Member States under the Dublin Regulation (EC) No 343/2003, based on allegations about the asylum procedure or reception conditions in the responsible Member State. It is anticipated that full implementation of the [Common European Asylum System](#)¹⁸⁷ will address this phenomenon in the future.

Table 1: Overview of equivalent national laws which have been (*in force*), or steps taken in order to begin to be (*not yet passed*), implemented during 2007 in order to transpose EU legislation. Note that this summarises only the changes or developments which occurred in 2007.

EU legislation	Equivalent National Law (status)
Directive 2001/55/EC (Temporary Protection)	Latvia: New Asylum Law (<i>not yet passed, but norms of Directive contained in current Asylum Law</i>) Romania: Law 122 (<i>in force</i>)
Directive 2002/90/EC (unauthorised entry facilitation)	Germany: addition of criminal provisions in Residence Act (<i>in force</i> , previously transposed in Immigration Act)
Directive 2003/9/EC (Reception Conditions)	Belgium: Asylum Seekers and Certain other Categories of Aliens Act of 12 January 2007 (<i>in force</i>) Germany: Asylum Procedure Act (<i>in force</i>) Latvia: Amendments to Asylum Law (<i>in force</i>) Romania: Law 122 (<i>in force</i>)
Directive 2003/86/EC (Family Reunification)	Belgium: Reform of Aliens Act, Laws of 15 September 2006 (<i>in force</i>) Germany: Immigration & Residence Acts (<i>in force</i>) Italy: Legislative Decree 5/2007 (<i>in force</i>)

¹⁸⁷ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0360:EN:NOT>.

	<p>Latvia: Amendments to Immigration Law (<i>in force</i>)</p> <p>Portugal: Law No. 23/2007 (<i>in force</i>)</p> <p>Romania: Emergency Government ordinance 194 (<i>in force</i>)</p>
Directive 2003/109/EC (Long-term residents)	<p>Belgium : Reform of Aliens Act, Laws of 25 April 2007 (<i>in force 1 June 2008</i>)</p> <p>Estonia: Amendments of Aliens Act (<i>in force</i>)</p> <p>Germany: Amendments to Residence Act (<i>in force</i>)</p> <p>Italy: Legislative Decree 3/2007 (<i>in force</i>)</p> <p>Latvia: Amendments to Immigration Law (<i>in force</i>) plus amendments to support for Unemployed Persons and Persons seeking Employment Law (<i>in force</i>)</p> <p>Netherlands: Amendments to Aliens Act 2000, Aliens Decree 2000, Regulations on Aliens 2000, Aliens Act implementation guidelines 2000, implementation rules for the Aliens Employment Act and the Manual for the application of the Netherlands Nationality Act (<i>in force</i>)</p> <p>Portugal: Law No. 23/2007 (<i>in force</i>)</p> <p>Romania: Emergency Government ordinance 194 (<i>in force</i>)</p>
Directive 2003/110/EC (Removal by air)	<p>Germany: Amendments to Residence Act (<i>in force</i>)</p> <p>Italy: Legislative Decree 24/2007 (<i>in force</i>)</p> <p>Portugal: Law No. 23/2007 (<i>in force</i>)</p> <p>Romania: Emergency Government ordinance 194 (<i>in force</i>)</p>
Directive 2004/38/EC (Free movement)	<p>Belgium : Reform of Aliens Act, Laws of 25 April 2007 (<i>in force 1 June 2008</i>)</p> <p>Ireland: Transposed through S.I. No. 656 of 2006, The European Communities (Free Movement of Persons) Regulations 2006 (<i>in force</i>).¹⁸⁸</p> <p>Italy: Legislative Decree 30/2007 (<i>in force</i>)</p> <p>Latvia: Amendments to Immigration Law (<i>in force</i>) plus amendments to support for Unemployed Persons and Persons seeking Employment Law (<i>in force</i>)</p> <p>Spain: Royal Decree 240/2007 (<i>in force</i>)</p>
Directive 2004/81/EC (Trafficking)	<p>Belgium : Reform of Aliens Act, Laws of 15 September 2006 (<i>in force</i>)</p> <p>Estonia: Amendments of Aliens Act (<i>in force</i>)</p> <p>Germany: Residence Act (<i>in force</i>)</p> <p>Latvia: Social Services and Social assistance Law (<i>in force</i>)</p> <p>Portugal: Law No. 23/2007 (<i>in force</i>)</p> <p>Sweden: Alien's Act (<i>in force</i>)</p>
Directive 2004/82/EC (Passenger data)	<p>Italy: Legislative Decree 144/2007 (<i>in force</i>)</p> <p>Netherlands: amendments to Aliens Act 2000, Aliens Decree 2000, Regulations on Aliens 2000 and Aliens Act implementation guidelines 2000 (<i>in force</i>)</p> <p>Portugal: Law No. 23/2007 (<i>in force</i>)</p> <p>Spain: Resolution 3381 (<i>in force</i>)</p>
Directive 2004/83/EC (Qualification directive)	<p>Belgium : Reform of Aliens Act, Laws of 15 September 2006 (<i>in force</i>)</p> <p>Germany: Asylum Procedure and Residence Acts (<i>in force</i>, individual amendments)</p> <p>Italy: Legislative Decree 251/2007 (<i>in force</i>)</p> <p>Latvia: amendments to six laws on child protection, employment, social services, professions, identification documents and education (<i>in force</i>)</p> <p>Netherlands: Aliens Act 2000, Aliens Decree 2000, Regulations on Aliens 2000 and the Youth Care Act Implementation plus amendments to Aliens Act implementation guidelines 2000 (<i>not yet passed</i>)</p> <p>Romania: Law 122 (<i>in force</i>)</p> <p>United Kingdom: Statement of changes to the Immigration Rules HC 28, entering into force on 7th November 2007 transposing provisions of Article 23(2).</p>
Directive 2004/114/EC (Students directive)	<p>Estonia: Aliens Act (<i>in force</i>)</p> <p>Germany: Residence Act (<i>in force</i>)</p> <p>Italy: Legislative Decree 154/2007 (<i>in force</i>)</p> <p>Latvia: Amendments to Immigration Law (<i>in force</i>) plus a new High Education Law will be passed</p>

¹⁸⁸ The European Court Of Justice declared in 2008 that the Irish statutory instrument was not compatible with the Directive (Preliminary Reference C-127/08, Metock and others – v – Minister for Justice, Equality & Law Reform). S.I. No. 656 of 2006 was thereafter amended by S.I. 310 of 2008 to reflect this decision.

	<p>containing the norms implied in the Directive 2004/114/EC.</p> <p>Netherlands: amendments to Aliens Decree 2000, Regulations on Aliens 2000 and Aliens Act implementation guidelines 2000 (<i>in force</i>)</p> <p>Portugal: Law No. 23/2007 (<i>in force</i>)</p> <p>Romania: Emergency Government ordinance 194 (<i>in force</i>)</p> <p>Spain: Council of Ministers Agreement of 16th February 2007 (<i>in force</i>)</p>
Directive 2005/71/EC (Researchers directive)	<p>Estonia: Aliens Act (<i>in force</i>)</p> <p>Germany: Residence Act (<i>in force</i>)</p> <p>Ireland: Administrative scheme agreed with Department of Enterprise, Trade and Employment (<i>in force</i>)</p> <p>Latvia: Amendments to Immigration Law (<i>in force</i>) plus amendments to support for Unemployed Persons and Persons seeking Employment Law (<i>in force</i>)</p> <p>Netherlands: amendments to Aliens Decree 2000, Aliens Employment Act Implementation Decree, Civic Integration Decree and the Regulations on Aliens 2000 (<i>in force</i>)</p> <p>Portugal: Law No. 23/2007 (<i>in force</i>)</p> <p>Romania: Emergency Government ordinance 194 (<i>in force</i>)</p>
Directive 2005/85/EC (Asylum Procedure)	<p>Austria: Asylum Court Act (<i>enters into force July 2008</i>)</p> <p>Belgium : Reform of Aliens Act, Laws of 15 September 2006 (<i>in force</i>)</p> <p>Germany: Asylum Procedure Act (<i>in force</i>)</p> <p>Ireland: Transposed 1st December 2007 (<i>in force</i>)</p> <p>Latvia: New Asylum Law (<i>not yet passed, but norms of Directive contained in current Asylum Law</i>)</p> <p>Netherlands: amendments to Aliens Act 2000, Aliens Decree 2000, Regulations on Aliens 2000 and Aliens Act implementation guidelines 2000 (<i>in force</i>)</p> <p>Romania: Law 122 (<i>in force</i>)</p> <p>United Kingdom: Amendments to Immigration Rules HC 82; Asylum and Immigration Tribunal (Procedure) (Amendment No.2) Rules 2007; Special Immigration Appeals Commission (Procedure) (Amendment No.2) Rules 2007 and Asylum (Procedures) Regulations 2007 (<i>all in force</i>)</p>
Regulation 562/2006 (Schengen Border Code)	<p>Netherlands: Amendment to Aliens Act 2000 (<i>not yet passed</i>)</p>
Regulation 1986 & 1987/2006 (SIS II)	<p>Latvia: Schengen Information System Operation Law (<i>in force</i>)</p> <p>Sweden: Amendments to be made</p>
Regulation 862/2007 (Migratory Statistics)	<p>Estonia: (<i>in force</i>)</p> <p>Latvia: amendment to Regulation on "The Statute of the Central Statistics Bureau" (<i>in force</i>)</p> <p>Sweden: (<i>in force</i>)</p>
