



ANNUAL POLICY REPORT 2005

produced by the

European Migration Network

November 2006

The purpose of this EMN activity is to provide an overall insight into the most significant political discussions, legal developments, as well as enforcement policies and administrative practices in the participating Member States within the field of migration and asylum.

The Synthesis Report contained herein is based on Country Study reports produced by each National Contact Point (NCP) of the EMN from **Austria, Belgium, Germany, Greece, Ireland, Italy, The Netherlands, and Sweden** and for the period 1 July 2004 to 31 December 2005.

Each Country Study (as well as this Synthesis Report) is available from the EMN website: <http://www.european-migration-network.org>

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Disclaimer

This Report was produced for the European Commission by the Berlin Institute for Comparative Social Research (BIVS) in co-operation with the European Commission and eight National Contact Points of the European Migration Network (EMN). This report does not necessarily reflect the opinions and views of the European Commission or of the National Contact Points, nor are they bound by its conclusions.



Executive Summary

This report provides an overall insight into the most significant political discussions, legal developments, as well as enforcement policies and administrative practices, in **Austria, Belgium, Germany, Greece, Ireland, Italy, The Netherlands, and Sweden** for the period 1 July 2004 to 31 December 2005. The report has been produced on the basis of a Country Study produced by the National Contact Point of the European Migration Network (EMN) from each of these Member States.

The summary report is divided into five sections. The introduction provides an overview of the **main trends in immigration and migration settlement**, providing information on stocks and flows, as well as a discussion of **current migration patterns** – the demographic composition of groups of migrants, general trends of emigration and immigration that have been observed, and any recent changes. Several Member States have observed a decrease in net inflow, though there are exceptions, notably Ireland. Typically, incoming migrants are men, aged between 25 and 50 years old, although this is evolving with, for example, the number of women steadily increasing over the last 10 years, and even doubling in **Italy**.

The second section is devoted to **political developments** related to migration and asylum policy, generally describing the structure of the political system and institutional context, including the main actors. General political developments, such as recent elections, are also outlined in this section, as well as central political debates in the areas of managed immigration, gates of entry and border control, integration and settlement, refugee protection and asylum, citizenship and naturalisation, return and other relevant topics. Finally, any institutional developments are highlighted. There are several common topics that can be identified in the central policy debates, such as the issue of family reunification, and the fact that many Member States have begun to actively consider closer co-operation with third countries.

In the third section, relevant **legislative developments** are discussed. The general legislative structure of the Member States contributing to this report are presented, in addition to any legislative developments in various areas (managed immigration, gates of entry and border

control, integration and settlement, refugee protection and asylum, citizenship and naturalisation, return and other relevant topics). It is worth noting that several Member States have recently enacted new Immigration or Aliens Acts. This section also describes the steps taken to transpose EU Directives into national legislation.

The fourth section presents a number of **other policy implementation issues** regarding migration and asylum policy, including labour and unemployment; housing and urban development; education; healthcare; family, youth and the elderly; women and gender; vulnerable groups, and discrimination, among others. Important aspects that are highlighted are the status quo, factors that lead to policy changes, and the impact of developments on the Member State and its legislation. Generally, policies aimed at improving social cohesion and the rights of marginalized migrants have been developed. A few Member States have, for example, taken steps to clarify the healthcare benefits available to asylum applicants, while others note improved labour conditions, especially for migrant women.

It is evident that the collection and presentation of data vary widely and consequently, owing also to a lack of systematic information in the participating Member States, there are variations and gaps. A central task of the EMN will be to establish a common basis for further comparative information gathering.

1. INTRODUCTION

The European Migration Network (EMN) aims to provide the Community, its Member States, and, in the longer term, the general public with objective, reliable and comparable information in the area of migration and asylum in order to support policy- and decision-making in the EU. The development of immigration and integration politics and policies is still a central issue in the European Union, as all Member States are required to supplement their own policy developments by transposing EU legislation on migration and asylum into their national legal frameworks. The assessment of such interconnected policy developments in the field of migration and asylum offers, on the one hand, the opportunity for comparison and discussion of such policies in the context of European politics, and, on the other hand, serves as a basic contribution to the political debate and identifies the need for further research and analysis on the part of EMN.

The Country Study's produced by eight (**Austria, Belgium, Germany, Greece, Ireland, Italy, The Netherlands, Sweden**) of the EMN National Contact Points (NCPs) aim to provide a detailed summary of all relevant national policy developments and discussions in the areas of migration and asylum. In this respect, note that comments in this report refer to these Member States and specifically the findings from the Country Study's undertaken by these EMN National Contact Points. Further information on the topics addressed here may be found in the relevant Country Study(s) and one is strongly recommended to consult them also.

Each Country Study has two main objectives. Primarily they document the implementation of EU legislation and the impact of European policy developments on Member States in a way that facilitates a comparative perspective. They also trace both Member State specific legislative developments and administrative practices in the field of migration and asylum, as well as corresponding political and public debates. The purpose of this report is to place such developments in migration and asylum policy as much as possible within a comparative perspective, in order to identify general trends.

The EMN NCPs contributing to this report used official demographic data in their evaluation of general trends in national migration and asylum processes. They primarily focussed on overall population changes and migration flows (immigration and emigration), as well as the net level of migration. Additionally, the number of asylum applications, the issue of

naturalisation, and return and repatriation procedures are also broadly discussed, taking into account national legislation and any recent modifications.

1.1 Main groups of migrants, refugees and asylum applicants

As observed previously, there is considerable variation in the main groups of migrants, refugees and asylum applicants in the Member States, owing, for example, to historic links with different countries of the world. Migrants hail from neighbouring Member States, and, in recent times, more significantly from the EU-10; from EU accession, candidate and potential candidate states, such as Bulgaria, Romania, Croatia, Turkey, and the former Yugoslavia (especially Serbia and Montenegro); from Albania, Russia; the Middle East (mainly Iraq); and, to a lesser extent, Africa, Asia and the Americas. In **The Netherlands**, there is an almost equal number of EU and non-EU migrants, whilst **Ireland** and **Sweden** have seen substantial levels of immigration from the EU-10 Member States (primarily Poland and Lithuania). In **Italy**, after the 2002 regularisation, the main migrants groups came from the Ukraine, Moldova, Romania and Poland. In **Austria**, migrants mainly coming from third countries are, to a large extent, dependants of Austrian nationals. This trend is also apparent in **Germany**, which has a high number of ethnic German re-settlers in addition to Jewish migrants, reunited family members, labour migrants (including seasonal labourers), project-tied workers, and green card holders.

Regarding the profiles of the migrant groups, generally they are of similar age and gender across all Member States. They are predominantly male, though the number of female migrants has steadily increased over the last ten years, and has even doubled in **Italy**. In terms of age, most migrants are between 25 and 50 years, with the average age of EU national migrants generally higher than the average age of non-EU national migrants. Some changes are visible in **Italy**, **Sweden**, **Germany** and **Belgium**, where the number of young migrants (under 25 years old), and especially of unaccompanied minors, is increasing. In response to this, **Belgium**, for example, has recently established a Guardianship Service to provide legal representation to young migrants.

In terms of the number of registered asylum applications, clear decreases over the last few years are reported in **Italy**, **The Netherlands**, **Sweden**, **Ireland** and **Austria**. In **Greece**, however, the number of asylum applications rose sharply in 2005, which, to some extent, is

attributed to the fivefold rise in applications submitted by Pakistani nationals. Stabilisation in the number of asylum applications has occurred in **Belgium**, which also mentions abuse of the asylum procedure by asylum applicants, although the quality of the influx of new asylum applicants seems to have increased in the last years. With regards to the recognition rate for asylum applicants in **Austria**, it is still at a significantly higher level than in the past. Overall, it is important to note that the number of positive decisions sharply increased from 2003 to 2004, before slightly declining in 2005. This development is more noticeable in **Germany**, where only about 5% of asylum applicants were recognised.

Some information is presented in connection to return, applications for residence permits and illegal migrants. For **Belgium**, the importance in the number of repatriations, refoulement¹ and voluntary returns is emphasised. For **The Netherlands**, a rise in the total number of emigrants within the last few years is noted. Moreover, with regards to residence permits, in **Sweden**, most of these were granted mainly for family ties, but also for work, studies and on humanitarian grounds. In **Austria**, a continuous decrease regarding the quota for settlement permits in recent years is mentioned. It is also noted that there has been a steady decline in naturalisations following a peak in 2003. Furthermore, in **Greece**, the issue of illegal immigration has increased in significance, with a substantial increase in the number of apprehended and removed aliens, which might reflect the stricter police checks that have been enforced.

1.2 General trends in emigration and immigration

Each Member State contributing to this report presents an analysis of national migratory dynamics, comparing recent data to previous years. In **Sweden** and **Austria**, for example, an increase in immigration, as well as in emigration, is observed, leading to an overall increase in the national net migration. In **Sweden**, migrants come mainly from other Nordic states and the EU-10 and leave for Norway, the USA, United Kingdom and Finland, whilst in **Austria** migrants come mainly from third countries. For **Ireland** an increase in the total number of incoming migrants is highlighted, particularly following accession of the EU-10 Member States. Emigration from **Ireland** is at a historically low level and it is now a country of immigration rather than of emigration.

The other Member States contributing to this report have not experienced significant increases in national net migration over the past few years, with, for example, net migration in **Belgium**, although positive, remaining relatively stable in recent years. In **The Netherlands**, **Greece** and especially **Germany**, there has been a decline in total inflow. Furthermore, for **Italy**, a general decline in net migration is observed, although there was a large degree of movement in 2005 and it is interesting to note that of the Member States, **Italy** has the highest number of emigrants at EU and international level.

1.3 Recent changes

Recent changes in asylum patterns are reported in **Austria** seeing a decline in asylum applications in 2004 and 2005. For **Germany**, recent changes are more reported regarding the naturalisation patterns mentioning a decreased number. In both these Member States, former Turkish nationals comprise the largest group of naturalised citizens, followed by nationals of Bosnia and Herzegovina, Serbia and Montenegro and Croatia, as well as nationals from Poland and Iraq in **Germany**. Additionally, **Germany** has a new procedure for admitting incoming Jewish migrants from the territory of the former Soviet Union, whereby the Federal Ministry of the Interior intends to set up an advisory board composed of representatives of the German Foreign Office, the Federal Office for Migration and Refugees, the Federal States and the Central Council of Jews in Germany to prepare for this admission procedure and to discuss hardship cases.

2 POLITICAL DEVELOPMENTS

An overview of the most recent political developments relevant to migration and asylum are given in each Country Study, explaining the general structure of the respective political system and institutional context, including the relevant governmental, as well as non-governmental bodies, and their areas of responsibility. New legislation and changes in the government and their influence on migration policies are also described. Central policy debates related to migration and asylum, such as migration management, integration and refugee protection are also given, to varying degrees.

¹ The term *refoulement* refers to deportation in any region where the deportee has to fear fundamental and profound violations of human rights, see article 33 of the Geneva Refugee Convention

2.1 General structure of the political system and institutional context relevant to migration and asylum

The political structure and institutional context relevant to migration and asylum issues is usually attached to the Ministry of the Interior. **Belgium** constitutes a slight exception, partly because of its particular federal structure having three Regions and three Communities, each with their own government and parliament. In all the Member States, the responsibilities for migration and asylum issues are shared between the various levels of government. Other Ministries, in particular of Justice, Foreign Affairs, Labour or Employment, are also involved when migration and asylum has an influence on, or is affected by, policy developments in these areas.

Regarding the distribution of responsibilities, **The Netherlands** Ministry of Justice accommodates two ministers, the Minister of Justice and the Minister of Immigration and Integration. The latter has at its disposal additional institutions, such as the Immigration and Naturalisation Service (IND) and the Central Agency for the Reception of Asylum Seekers (COA). Furthermore, there are some Member States which have supplementary bodies like the Federal Office for Migration and Refugees in **Germany** (in addition to a Federal Commissioner for Migration, Integration and Refugees), the Swedish Migration Board and the Aliens Appeal Board in **Sweden**, and the Federal Asylum Office in **Austria**. Other relevant bodies in the field of migration and asylum are police authorities and civil society organisations. In some Member States, regional or federal political institutions are responsible in the political field, mainly for integration activities. Regarding the involvement of civil society, in **Italy**, territorial committees for immigration have been established in every province and region.

2.2 General political developments

There were no national elections during the period under review, except for **Germany**, where early national elections were held in September 2005, resulting in the formation of a new government coalition. In **Austria**, there was a restructuring of the party system and the government was re-organised. Some regional elections also took place, with **Italy** holding elections in 2004 and 2005 in almost all of its 20 regions. These elections were won by

(<http://www.unhcr.at/index.php/aid/1850>)

candidates of the centre left, who wish to create a more favourable climate for immigrants on the regional level, though no concrete steps had been taken by the end of 2005 to modify existing legislation.

A major political transition took place in **Greece** shortly before the period covered by this report. Though the new governing party has not implemented any drastic changes to asylum and refugee policy legislation and administration, a new legislative framework on migration was debated and passed by parliament in August 2005. In **Ireland**, general political changes at the national level included a cabinet reshuffle. In addition the increased number of immigrants coming to Ireland has meant that the decision making process relating to immigration has had to become more structured and transparent. In **The Netherlands**, migration and asylum policies were tightened and institutional changes entailed transfers of administrative tasks.

Furthermore, **The Netherlands** held the EU Presidency in the second half of 2004, and asylum and migration policy received significant attention because of the adoption of the Hague Programme, which set out priorities for freedom, security, and justice, the enhancement of the European return policy, preparation for the implementation of a common asylum procedure, and advocacy in favour of further co-operation in external border control operations.

2.3 Central policy debates and political developments related to migration, integration and asylum issues

Policy debates and political developments differed between Member States in regard to six broad categories: managed immigration; gates of entry and border control; integration and settlement; refugee protection and asylum; citizenship and naturalisation; and return, although there was a lot of overlap between these categories. For example, various issues such as family reunification, bogus marriages, treatment of minors, belong to more than one category. In addition, regular political activities at the sub-national level (regional, territorial, local) are discussed for **Italy** and **Belgium**. All Member States refer to different institutional developments of institutions, organisations or to other agencies and actors in the fields of migration, refugee protection and integration.

2.3.1 *Managed immigration*

In regard to family reunification, in **Belgium** and **The Netherlands** there is a tendency to restrict this immigration option. It is perceived that this gate of entry relates to unwanted marriages of convenience. In **Belgium**, the introduction of DNA tests is debated, while in **The Netherlands**, the minimum age and income requirements are discussed. In **Ireland**, some NGOs argued that insufficient consideration was given to family reunification rights in a proposed Employment Permits Bill.

There is also a lot of debate about economic migration, especially in terms of quotas for foreign workers. This issue is particularly prominent in **Belgium**, as well as in **Italy**, a Member State where it is stated – according to the Country Study – that several legislative problems still need to be solved in connection with the proposals made by the European Commission². For **Sweden**, by contrast, the adoption of two bills mandating the transparency of asylum procedures and residence permit applications, as well as a very heated debate concerning asylum-seeking children with severe withdrawal behaviour, are highlighted. The Swedish media put a lot of pressure on the national Government to resolve this issue, resulting in a "guiding decision". In **Austria**, the Ministry of the Interior revived the debate concerning some Member States planning to establish reception facilities for refugees in selected North African countries.

2.3.2 *Gates of entry and border control*

Political debates directly related to the topics of gates of entry and border control took place in three Member States. For **Italy**, an increase of efforts to control the national borders by national border police and international agreements is highlighted. For **Belgium** and **Ireland**, issues around family reunification, as well as the phenomenon of trafficking, are specifically mentioned in this section, including the high priority given to the safety and health of victims of trafficking and the granting of residence permits. In addition, the topics of unaccompanied minors and bogus marriages are debated in **Belgium**.

2.3.3 *Integration and settlement*

With regards to legislative developments, in **The Netherlands** amendments regarding integration abroad and a proposal for a new Integration Act (for migrants residing in The Netherlands permanently) were discussed, while an implementation of a decree to establish a

² e.g. COM (2001) 386 final, COM (2005) 669 final, COM (2004) 0811 final, COM (2004) 412 final

coherent integration policy is mentioned for **Belgium**. Ongoing debates about the controversial banning of headscarves in schools and of discrimination or racism are also described. In **Ireland**, several measures to promote integration were announced specifically addressing the topics of discrimination and racism. The Irish language competency requirement for entry into the police was abolished. A National Action Plan against Racism was also launched.

In **Germany**, the Federal Office for Migration and Refugees started to act as a centre responsible for integration issues. Instruments used to implement its integration policy include language and orientation courses, the dialogue between religions and cultures, as well as the promotion of gender equality. For **Austria**, measures regarding citizenship and naturalisation are mentioned, whilst in **Italy**, current regulations on the integration of immigrants were not amended by Law 189/2002. Since Law 40/1998, **Italy** has tried to develop integration policies for co-habitation with a low threshold of conflict, thanks in part to the significant intervention of local organisations.

2.3.4 *Refugee protection and asylum*

In **Germany**, the plan to co-operate more closely with countries of origin and transit in the future was strengthened, but with the intention to combat more intensely the root causes of refugee flows. Although the German government favours an EU-wide approach to refugee policy, and the implementation of eleven EU directives in its current legislation, it maintains that access to labour markets must remain a matter of national jurisdiction.

In **The Netherlands**, the asylum procedures were reformed with the implementation of the 2001 Aliens Act. One of the reforms was the shortening of the asylum procedure and the stricter implementation of the return provisions of the Act. This led to a political debate on how to legally treat the group of asylum applicants that had filed their application prior to this 2001 Aliens Act, but had not yet ended all the avenues of legal appeals of their request for asylum. As a result, a more lenient policy for this group was tabled. In **Ireland**, measures to speed up the asylum and deportation processes were implemented and political debates gave particular attention to the misuse of the asylum system. This was also the case in **Italy**, although the recent statistics indicate that this risk does not exist, with debates focussing more on the considerable number of applicants merely trying to circumvent established immigration restrictions. The discussion in **Austria** revolves around the fact that the federal

provinces have failed to fulfil the "Basic Welfare Support Agreements". Debates also occurred on the future of Austrian legislation concerning the so-called "Aliens' Act Package 2005", by which several EU legal provisions should be transposed and Austria's legislation concerning aliens, asylum and federal care for refugees as a whole be harmonised.

2.3.5 *Citizenship and naturalisation*

In **Ireland**, the enactment of new legislation concluded a long period of debate and uncertainty about entitlement to Irish citizenship. Now if a child is born in Ireland one of the parents must have been legally resident in Ireland for three years during the four years immediately preceding the child's birth, in order for that child to automatically acquire Irish citizenship. In **Italy**, until the end of 2005, the Italian Parliament has shown no willingness to modify existing legislation, which led to significant delays to progress on the issue of citizenship. Minors of migrant background still face unequal treatment and significant obstacles to integration in **Italy**. Regarding **Austria**, legislative stagnation is attributed to divergent opinions within the federal government regarding naturalisation periods. As a result, the adoption of the new "Citizenship Act" continues to be blocked.

In **The Netherlands**, there was a debate on the conditions to be met for fast track naturalisations, where the Minister of Immigration and Integration can, on the basis of discretionary powers, grant fast track naturalisations in individual cases if it serves an essential Dutch interest. However, the Minister argued that in the light of tightening the Naturalisations Act in 2003, also more integration conditions need to be met in fast-track naturalisation cases in spite of Dutch interest. The discussion of citizenship and naturalisation in **Belgium** mainly refers to the Moroccan community, as a result of the events organised for the 40th anniversary of Moroccan presence in Belgium.

2.3.6 *Return*³

In **Belgium**, some issues continue to be discussed, such as the status in the transit area, the fundamental rights in case of detention in a closed centre and the voluntary return schemes. Deportation by chartered flights is also a topic of public debate in **Ireland**, particularly in the Irish media. The Irish Comptroller and Auditor General's 2004 Annual Report, paid particular attention to the issue of enforcement of deportation orders. The absence of exit checks at departure points from **Ireland** and the ease of movement over the land border with Northern

³ The EMN will produce a more detailed study on this topic, end 2006.

Ireland allows for substantial abuse of the common travel between Ireland and the United Kingdom by those without legal residence status.

One focal point of the discussion about return policy in **Austria** was the inclusion of the concept of “safe third countries” in the new Asylum Act. Politicians expressed their concern about the safety of third countries, with even some other Member States being assessed as “unsafe”. Furthermore, issues, such as the forced feeding of persons who go on hunger strike while in detention pending deportation, led to a controversial public discussion.

For **Italy** the issue of entrepreneurial-professional returns is highlighted, which is considered a very important topic, but almost never discussed. It is mentioned that for this kind of return there is no relevant legislative framework in the European Union. The only form of return immigration programmes that are currently carried out in **Italy** are those on behalf of victims of human trafficking. These programmes have been discussed in a rather positive way, albeit rarely used.

2.3.7 *Other policy debates and political developments*

In **The Netherlands** it was proposed to tighten the 'sliding scale' for residence permits, extending the possibilities to terminate (lawful) residence of convicted criminal foreigners. Migration and integration debates in **Italy** include the topic of political participation at the territorial level (focussing on the introduction of additional councillors or councils), and at the regulatory level (regarding the modification of statutes and regional laws to enfranchise immigrants in administrative elections). In **Ireland**, attention is paid to the issue of detention, on which several NGOs commissioned research. It was argued that Irish law does not adequately protect the rights of persons who have been refused permission to land or are detained pending deportation, and prison conditions are criticised for being overcrowded. In **Austria**, a study on elderly migrants conducted by the Austrian NGO Asylkoordination Österreich (Asylum Coordination Austria) showed that these migrants face severe language barriers, have little information about social services and would need a “native speaker home healthcare service”. The study recommended that a pool of interpreters for migrants suffering from different diseases and for migrant retiree communities be established. It was also noted that retiree accommodations for migrants should be established because integration has failed so far. In **Germany**, in January 2005, the federal government presented draft legislation of an anti-discrimination bill, which has been criticised for going far beyond EU legislation and

compromising freedom of contract, partly because landlords and employers would incur the risk of legal proceedings and compensation payments, for example when recruiting or promoting staff.

2.4 Institutional developments

Various new institutions and organisational changes are mentioned, with many changes related to the regulation of migration flows. For **Ireland**, the establishment of the "Irish Naturalisation and Immigration Service (INIS)" responsible for asylum, immigration and visa issues is described. The Government agreed to accept an EU Council Regulation⁴ creating an Immigration Liaison Network whose objective is to establish a formal network of Immigration Liaison Officers (ILOs) posted in third countries. In **Austria**, changes entail better institutional co-operation and the establishment of a "Country of Origin Documentation Council" by decree (provided for by the Aliens' Police Act). In **Germany**, a government act officially changed the name of the "Federal Border Guard" to "Federal Police". Another noteworthy development was the establishment of a council of immigration and integration experts, attached to the Federal Office for Migration and Refugees. However, this "Council" was subsequently closed at the end of the year due to repeal by the Ministry of the Interior. In **Sweden**, migration courts replaced the "Aliens Appeal Board" on 31 March 2006 and the mandate of the Swedish Migration Board was enlarged. The primary purpose now being to improve the conditions for the effective management, and for the legal security, of asylum-applicants. In **Greece**, an inter-ministerial Committee has been established to supervise and co-ordinate migration policies, and several new regional-level Committees have been created and existing ones have been reformed.

In **Italy**, competences were reallocated and commissions on the territorial level established to assist the National Commission for the Right to Asylum in the examination of asylum applications and the identification of asylum applicants in the reception centres. For **Belgium**, the set-up of a working group for visa policy issues is highlighted in order to demonstrate a more intensive form of co-operation between the Federal Public Service (Ministry of) External Affairs and the Director General of the Immigration Service. The "Regularisation Unit" was also being strengthened to deal with the growing number of applications and two new authorities to combat human trafficking and smuggling were created reflecting, for

⁴ Council Regulation (EC) NO. 377/2004

example, the international regulatory environment by seeking to strengthen the criminal law framework for preventing the facilitation of unauthorised entry, transit and residence. Other developments included extended co-operation with airlines in relation to return and removal policies; an increase in the number of places available in several closed centres; and consolidation of various agreements with relevant countries of origin.

3 LEGISLATIVE DEVELOPMENTS IN THE AREA OF MIGRATION AND ASYLUM

In **Belgium** the Immigration Act was reformed to incorporate the EU Directive on family reunification⁵ and human trafficking and smuggling⁶ (calling for more severe punishment for such offences). As described in Section 2.3.5, in **Ireland**, new legislation restricted the conditions under which citizenship is granted to children born in Ireland to foreign parents. Similarly, other sections mention also the effect of, in **Austria**, the restructuring of the legal system with the Aliens' Act Package of 2005 and in **Germany**, of the new Immigration Act which was introduced on 1 January 2005. As mentioned above, in **Sweden**, a new Aliens Act entered into force on 31 March 2006.

For **Greece**, a new immigration law including provisions with regards to legalisation of immigrants under certain conditions; the incorporation of EU directives regarding the status of long-term residents and family reunification; the single residence permit; income requirements, expulsion in the case of pregnant women; etc., is noted. The application fee for legalisation in Greece is probably the highest in the EU, and incoming migrants are allowed limited flexibility in their economic activities.

3.1 General structure of the legal system

All Member States contributing to this report are quite similar in terms of the general hierarchical structure of their national legal system related to migration and asylum. Besides the common international law framework (Geneva Refugee Convention, the Convention Relating to the Status of Stateless Persons, and the European Convention on Human Rights

⁵ Council Directive 2003/86/EC

⁶ Council Directive 2004/81/EC

and Fundamental Freedoms) and European Community law, only some Member States, such as **Germany** and **The Netherlands**, have their constitutional and statute law explicitly at the top of the legal hierarchy. All Member States have a national legal frame for immigration and asylum issues, as well as additional acts and ordinances, such as the Nationality Act and the Aliens Employment Act in **The Netherlands**, or the Residence Act and the Asylum Procedure Ordinance in **Germany**. Generally, this legislation is specified in detail lower in the regulatory framework hierarchy.

Legislative modifications mainly entail the transposition of various EU directives (subsidiary protection, asylum procedure, recognition procedure) into national law. In **Belgium** a major reform was announced to be implemented in 2006. The 2005 introduction of the Aliens' Act package in **Austria** has significantly restructured the legal system in the field of migration and asylum. In **Sweden**, temporary amendments to the 1989 Aliens Act entered into force on 15 November 2005 and were then replaced by new Aliens Act on 31 March 2006. The legislative framework in **Italy** was modified through some adjustments to adapt it to the sentences of the Constitutional Court and new implementing regulations (2004) of the Consolidation Act on Immigration (1998), specifying the new procedures, the requisites, timing, and methods for requesting/renewing/converting documents that are valid for entry and stay.

3.2 Legislative developments

Legislative developments cover various areas. These include *inter alia* immigration management, the definition of gates of entry, the implementation of border control, policies of integration and settlement, refugee protection and granting asylum, citizenship and naturalisation, and return. Changes have occurred in, for example, constitutional law, case-law, court decisions, and relevant decrees.

3.2.1 *Managed immigration*

There were important developments in both **The Netherlands** and **Germany** concerning labour migration, particularly the movement of skilled workers. While a Skilled Worker Regulation, based on the Lisbon Strategy, was introduced in **The Netherlands**, **Germany** maintains “recruitment stops” as a matter of principle for people with little or no professional qualifications, as well as for those with qualifications. Another issue within the context of

labour migration that is mentioned for **Germany** is labour market access for EU-10 citizens in accordance with the priority principle, i.e. only if no German national or person with equivalent rights (e.g. from another EU-14 Member State, legally resident non-EU national) is available to take the job. In accordance with Transitional Arrangements set out in the 2003 Accession Treaty⁷, **Germany**, like many other Member States, have transitional arrangements for EU-8 (i.e. except Cyprus, Malta) nationals until 2011. However, a permanent right of residence for highly-qualified people is possible from the outset. Such persons may receive a settlement permit immediately.

In **The Netherlands**, legislation governing persons who apply for family formation and for family reunification has, not for all but for most categories, been tightened. In **Austria**, a new regime defining quota-free family reunification has been introduced. The regime is based on the differentiation between “real” and “imaginary” free movements in the European Courts of Justice’s case law⁸.

Further developments refer to the legal introduction of fingerprint checks of certain categories of foreign nationals in **Belgium** and the modification of the application procedure for residence permits by a new fees system in **The Netherlands**. Several Government Bills in **Sweden** were adopted regarding the victims of human trafficking, the clarification of the identity of asylum applicants, and so forth. In **Italy**, legislation focussed on the regional level with a "Single Desk for Immigration", handling procedures pertaining to employment for foreigners and family reunification was established in every province.

3.2.2 *Gates of entry and border control*

In **Austria** a new "Aliens Police Act (FPG)" was introduced to regulate the entry and termination of both legal and illegal stays. A new law in **Greece** on gates of entry is consistent with the previously applicable law, mandating controlled boundary crossing and police checks that fall under the jurisdiction of the Ministry of Public Order. **Greece** also formulated new legal provisions on family reunification, allowing migrants who legally reside there for at least two years to apply for the entry and residence of their family members. In **Italy**, around mid 2004 the Constitutional Court (sentences 222 and 223) declared that some regulations of law 189/2002, on forced expulsions and the mandatory arrest of habitual illegal

⁷ See http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0048en01.pdf.

⁸ More detailed information can be obtained from the Austrian Country Study.

immigrants, were illegitimate. The Government adopted these judgements with Law Decree 241/2004, offering greater judicial guarantees.

No new legislation in this field was enacted in **The Netherlands**, though some new procedures were implemented. Also, amendments had to be made to the Aliens Act implementation guidelines as a result of the accession of the EU-10 Member States and transitional law concerning Resolution 343/2003/EC (former Dublin Agreement). Moreover, in **Italy** the automated data system of the Ministry of Labour was upgraded in 2004 in order to build an information network for employment and job fairs, and the information system for seasonal workers (SILES) was launched in 96% of the provinces.

3.2.3 Integration and settlement

In **Belgium**, a general policy document written by the new Minister of Social Integration sets forth the priorities for the reception of asylum applicants. The document declares that reception facilities have to show a bond of “solidarity” with people seeking asylum and a sense of “responsibility” towards the political, economic and social context of international migratory flows. For **Austria**, developments that were initiated by the 2002 Integration Agreement are mentioned. This agreement primarily stipulated the obligation for third country nationals to learn German. Currently, the Austrian Integration Fund is still in charge of certifying institutions that can provide relevant courses and the Asylum and Migration Advisory Board (UBAS) is in charge of determining additional integration-related measures. The Ministry of Interior, together with the International Organisation of Migration (IOM) Vienna, has recently published a report on integration measures throughout Austria. In **Greece**, there has been a section in the new law addressing the issue of integration. However, the relevant provisions are still very general and abstract, and in need of further specification and implementation in practice.

3.2.4 Refugee protection and asylum

Several different legislative modifications related to refugee protection and asylum, ranging from asylum procedures for residence and work permits to registration in reception centres, are presented. Overall, however, these developments seemed to be small-scale and of no major significance. In **Greece**, for example, two Presidential Decrees were implemented - one decree on conditions and procedures for the granting of a work permit or any other assistance for occupational rehabilitation, and the other decree on the asylum application procedure. The

only legislative change is that foreigners whose application for political asylum was rejected by the Ministry of Public Order will be eligible to apply for a residence permit, provided that they can prove they have been living in Greece since at least 31 December 2004. In contrast, the changes introduced in **Austria** with the 2005 Asylum Act refer basically to the definitions of certain terms and the removal of the term “obviously unfounded” from rejected asylum applications, as well as the introduction of a general database of information about the countries of origin of asylum applicants. More stringent modifications have been proposed in **Belgium**, reforming the whole asylum procedure. In **The Netherlands**, the validity of the temporary asylum residence permit has been lengthened, the policy for underage solitary asylum applicants who were supervised by an adult has been relaxed and finally the 'no fault criterion' has been widened. Finally, in **Italy**, the Ministry of Interior and the National Association of Italian Municipalities have integrated state funds at the local level to create a territorial system that can host a few thousand people. This system is producing good results and is a significant change.

3.2.5 *Citizenship and naturalisation*

In **Greece**, efforts were made to loosen certain naturalisation requirements. The tightening of legislative measures in **Austria** has resulted in harsh public criticism, though the Citizenship Act has been blocked by the Federal Council. For both **Ireland** (outlined in Section 2.3.5) and **Italy**, regulations regarding the rights of children born within the Member State are mentioned. In **Italy**, discussion continued on the bills for the acquisition of citizenship, with reforms regarding the acquisition of citizenship upon birth expected, going beyond the rigid concept of *jus sanguinis*. In **The Netherlands**, measures to promote the equal treatment of marriages and partnerships registered outside the Member State were discussed, as well as the introduction of a special telephone test for persons unable to use a computer. Before the amendment, this person would have been exempted from the test.

3.2.6 *Return*

In **Belgium**, a Commission "tasked with assessing the removal guidelines" was set-up with the intention to make the removal policy as humane and efficient as possible. Several readmission agreements came into force on 1 February 2005.

Within the context of return policy, in **Italy**, legislation concentrated, on the one hand, on assisting with the voluntary repatriation of victims of human trafficking for sexual and work

exploitation, and, on the other hand, on the promotion and management of actions relating to and leading to assisted repatriation. There are still few experiences related to voluntary repatriation of illegal immigrants, which are mainly addressed to victims of trafficking. In **Austria**, the main changes to return policy introduced in the Aliens' Police Act focus on detention pending deportation and appeals against forced return.

3.2.7 Other legislative developments

While the scope of penalisation of human smuggling and trafficking was expanded in **The Netherlands**, **Austria** introduced new provisions against human smuggling and the trafficking of other illegal items. In addition, for **Austria**, again the topic of bogus adoptions and marriages is highlighted, which have been discussed in the framework of the 2005 Aliens' Act package. Hence, the rules regarding the right of third country nationals to reside in **Austria** as a result of adoption or marriage have been tightened. In **Italy**, at the end of 2004, the implementation of measures for the rationalisation and interconnection of communications on immigration among public agencies has entered into force. Moreover, eight bills were presented on the enfranchisement of foreign citizens. For **The Netherlands**, three important decisions by the Dutch Council of State and one case law (ECHR) are stressed, as they have influenced the implementation of Aliens law to a substantial degree.

3.3 Implementation of EU legislation

As mentioned in previous chapters, almost all Member States under review were very active in the national-level implementation of EU legislation concerning migration and asylum. Member States have been especially active in implementing the EU directives on family reunification⁹, minimum standards for the reception of asylum seekers¹⁰, minimum standards for granting temporary protection¹¹, the status of third-country nationals who are long-term residents¹², the right of EU citizens and their family members to move and reside freely within the territory of the Member States¹³, the obligation of carriers to communicate passenger data¹⁴, and the minimum standards for the qualification and status of third-country

⁹ Council Directive 2003/86/EC

¹⁰ Council Directive 2003/9/EC

¹¹ Council Directive 2001/55/EC

¹² Council Directive 2003/109/EC

¹³ Council Directive 2004/38/EC

¹⁴ Council Directive 2004/82/EC

nationals or stateless persons as refugees or as persons who otherwise need international protection¹⁵.

For **Ireland**, the adoption of EU legislative instruments, or at least the notification of the desire to opt-in, is highlighted. It is worth noting that the federal government in **Germany** took significant steps to prepare a draft law transposing the directives of the European Union on residence and asylum into national law. A legislative initiative prepared in Spring 2005 was not moved forward, owing to political events at the Federal level preventing the conclusion of the procedure before the end of the 15th legislative period of the Bundestag. However, many sections of German law on aliens are already in accordance with the Directives, meaning only slight changes are necessary.

4 OTHER POLICY IMPLEMENTATION ISSUES

In addition to the policy implementation issues discussed previously, other relevant topics referring to asylum and migration issues, such as the labour market, housing and urban development, education, healthcare, family, gender, vulnerable groups, and discrimination are highlighted. Most of the policies presented aim at increasing the level of social cohesion and improving the rights of vulnerable migrants. In **Belgium** (Flanders), for example, a decree took steps to establish a programme of integration and language courses for newly arrived aliens, and, in 2005, the Federal Government announced a ten-point action plan to combat racism. The main opposition party in **Greece** opened membership to migrants, and in **The Netherlands**, measures were taken to improve the participation of persons of non-native Dutch heritage in the labour market. The protection of migrant workers was also a dominant theme in **Ireland**. For **Italy**, the topic of double discrimination faced by migrant women is considered, as well as policies which have tried to be implemented to improve their standing. Finally, several Member States undertook research on the level and extent of discrimination faced by migrants in various aspects of life.

¹⁵ Council Directive 2004/83/EC

4.1 Labour market and employment

Although in general there were no major legislative changes during the reference period, policy implementation issues in the area of labour market and employment are broadly discussed. The only Member State in which noticeable legislative changes did occur is **Germany**, where a significant reform process was initiated by combining the unemployment and social-welfare assistance programmes into a basic security benefit for job seekers (Fourth Act for Modern Services on the Labour Market). In **Belgium**, a draft for a new Royal Decree was approved within the government, leading to a tightening of labour migration controls and better conditions for knowledge workers. In **Sweden**, its Committee on Labour Immigration was instructed to propose a regulatory framework that will allow more extensive labour immigration from third countries.

In **The Netherlands**, a number of government initiatives were implemented to improve the employment situation of immigrants and refugees, concentrating on issues such as social cohesion and national diversity, as well as on the participation of women of non-Dutch heritage in the labour market and youth unemployment. The rising unemployment rate in **Austria** has made it an important topic there as well. Other relevant public debates, surveys and reports have consistently dealt with the recruitment of high-skilled workers (**Italy**) and the consequences of EU enlargement (**Belgium, Ireland**). Additional important discussions included topics such as the protection of migrant workers, students' access to labour markets, and paid labour by naturalised citizens.

4.2 Housing and urban development

In **Belgium** the law against human smuggling, human trafficking and slum landlordism features new provisions to criminalise persons who rent out dilapidated houses/apartments at exorbitant prices to illegal tenants who are unable to find other suitable accommodation. In **Sweden**, the Government proposed a bill that would decrease the possibility of taking advantage of asylum applicants' weak position in the housing market, as a response to negative reports about asylum applicants arranging their own housing. The bill cancels the housing subsidy that encouraged asylum applicants to find their own housing and instead offers housing to those who are not able to arrange this themselves. Parliament approved the bill and it came into force on 1 March 2005.

Although no legislative amendments in the field of housing and urban developments were made in **The Netherlands**, a number of national policy plans to improve the living conditions of persons of foreign heritage were noted. Similarly, there were no legislative developments in this area in **Italy**, but the question of housing has been acknowledged as important for the integration of migrants. An answer to the housing needs of immigrants might be public housing, as provided for by the Consolidation Act on Immigration of 1998, which places regularly residing immigrants on the same level with Italian citizens, with regard to the possibility of participating in the assignment of public housing. Unfortunately, there are still no complete, regular surveys to monitor the evolution of housing conditions of migrants in Italy.

4.3 Education

There has been a spectrum of debates and legislative developments in the field of education, ranging from measures affecting migrants to modifications and improvements in the national education system. Besides these developments, in **The Netherlands**, a number of government initiatives and policy plans reducing educational disadvantages were mentioned.

In the Flanders region of **Belgium**, the link between the labour market and education was improved by organising compulsory integration courses for recognised refugees, accepted asylum applicants, specific labour migrants and naturalised citizens. For **Austria**, the implementation of measures to improve the language skills of pupils with a non-German mother tongue is mentioned. Other Member States continued to hold debates on integration, for example, by discussing the educational qualifications of immigrants (**Ireland**), or whether asylum-seeking children in hiding should be granted the right to schooling (**Sweden**).

For **Sweden**, the introduction of a university education program, designed to increase the number of qualified translators to meet the demand brought by the reform of the Aliens Act, calling for more oral proceedings, is noted. Debates in **Italy** have emphasised the need to deliver training on the promotion of equal opportunities and an open attitude towards differences in schools. Unfortunately, the achievement of this aim is hindered by a lack of financial resources. For **Germany**, the improved opportunities for young people on the vocational training market through the National Pact for Education and Training and Young

Skilled Workers are highlighted. At the same time, **Germany** implemented a special programme to target groups with special needs.

4.4 Health care

Ireland, Italy, The Netherlands and **Sweden** mention different health care policy measures. For **The Netherlands**, a number of amendments to the implementation guidelines of the 2000 Aliens Act concerning the conditions for admission in The Netherlands on grounds of receiving medical treatment is noted. The possibility to be admitted as a refugee if one was discriminately withheld medical treatment in the country of origin was laid down. Also financial incentive programmes were set up to encourage healthcare organisations to improve care provided to persons of foreign heritage. The Government of **Sweden** implemented a new agreement with the Swedish Federation of Councils, which complies well with the requirements set up in Council Directive 2003/9/EC on minimum standards for the reception of asylum seekers in Member States. However, the agreement is more far-reaching than the Directive and includes, for example, healthcare for asylum-seeking children. At present, the Government is preparing a proposal for supplementary legislation that will better correlate the legal status of asylum applicants with the healthcare that they receive in practice. Furthermore, the Government has commissioned the National Board of Health and Welfare to develop recommendations for the care and treatment of children with severe withdrawal behaviour.

For **Ireland**, its efforts on developing a new plan to improve healthcare and personal social services provided to ethnic minority communities in the eastern region are stressed. Whilst for **Italy**, another issue in this regard is highlighted, namely the contribution of nurses of migrant background, indicating that immigration is a beneficial tool to respond to the care needs of Italian society. The ageing of the population is leading to a great increase in the number of elderly persons in need of assistance, both at the clinical and therapeutic level and at home¹⁶.

¹⁶ The situation of migrant healthcare workers is addressed in an EMN study, which will be completed in the latter quarter of 2006.

4.5 Family, youth and the elderly

Generally considered, most of the policy implementations in the field of family, youth and the elderly, focus on minors. In **The Netherlands**, important national initiatives for foreign youths concentrating on ethnic minorities were implemented. For example, new initiatives to enhance integration of ethnic minority youth in Dutch society, in cases of involvement with crime, and additional financial support for municipalities with large Antillean communities, to supplement their own efforts to comprehensively tackle the issue of Antillean youth at risk.

For **Ireland** and **Sweden**, a detailed treatment of minors is presented, with the former referring to two policy documents: one for children living in asylum-seeker accommodation centres; and one on the development of 'Infant Feeding Guidelines for Direct Provision Centres', in line with recommendations from UNICEF and the World Health Organisation. **Sweden** concentrated on a government bill regarding the reception of unaccompanied minors and the government also increased financial grants to local municipalities, in order to provide better preventative support and improved early action plans for cases of asylum-seeking families with children. Support measures for asylum-seeking families also play an important role in **Italy**, which limits the discussion to family reunification and, to a lesser extent, the elderly. The Italian law in this regard has been relatively liberal with respect to the relevant EC Directives.

4.6 Women

No explicit modifications to national legislation concerning women occurred in **Belgium, The Netherlands, Greece, Sweden, Austria** and **Germany**, since, for example, a number of important national initiatives in this field were covered in other policy developments.

For **Ireland**, however, research which indicates that increasing numbers of women are being trafficked into the Member State for prostitution is mentioned, as well as an assessment of the national situation, which was submitted to and examined by the CEDAW Committee in July 2005. Similarly, for **Italy** the general topic of double discrimination is accentuated - female immigrants face particular forms of exploitation or discrimination, because they are both women and immigrants.

4.7 Vulnerable groups

Almost no explicit policy implementation concerning vulnerable groups, other than for unaccompanied minors described elsewhere, took place, except in **Belgium**, which amended, as already mentioned before, a law to step up action against trafficking and smuggling of human beings and the activities of slum landlords. The act of human trafficking has been identified as contributing in some way to facilitating the entry, transit or residence of a non-EU citizen in violation of the State's legislation, in order to secure a pecuniary benefit. But, as has been mentioned earlier, the topic of vulnerable groups is indirectly touched upon in various other debates.

For **Ireland**, the topic of minors is focussed in particular on the issue of unaccompanied minors. Research has been done on the problem of children who disappear from Health Board Care, resulting in the need for additional funding for the adequate supervision of unaccompanied minors, as well as on addressing the health and social education needs of separated children seeking asylum. The action plan that resulted from the research stresses the need to promote sexual and reproductive health.

For **Italy**, the very particular issue of nomads (e.g. Roma) is highlighted, stating that this group receives the most negative attention in their country. This issue was emphasised at the international congress of the International Romani Union (IRU), an NGO that represents nomads throughout the world, where more than 2.000 delegates from 47 countries participated, representing 12 million Roma worldwide. It is worthwhile to note that the European Committee of Social Rights declared the collective complaint against **Italy**, lodged by the European Roma Rights Centre (ERRC) in the month of June 2004, to be inadmissible.

4.8 Discrimination

Specific policy implementations in the field of discrimination are only mentioned by some Member States, with the main focus primarily on research within this topic. Studies in **Belgium** have concentrated mainly on discrimination in the labour market, documenting the level and extent of discrimination, as well as listing the disadvantages of non-nationals compared to their Belgian-born counterparts. The level of resistance to immigrants based on the perception of an ethnic threat also played an important role. Research in **Ireland**

published by the Central Statistics Office confirms that persons from "other ethnic backgrounds" reported the highest rate of discrimination. Undoubtedly, in **Italy**, an important event was the establishment of the UNAR (National Anti-Racial Discrimination Office) at the offices of the Department for Equal Opportunities of the Prime Minister's Office with Legislative Decree no. 215 of July 9, 2003, which implemented EC directive 2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin. In 2004 the new office was consolidated, and, in 2005, it began to operate at full capacity.