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Services at Borders: a practical co-operation

final report



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ΕΛΛΗΝΙΚΟ ΣΥΜΒΟΥΛΙΟ ΓΙΑ ΤΟΥΣ ΠΡΟΣΦΥΓΕΣ

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TABLE OF CONTENTS

1. Introduction	<i>page</i> 5
2. Participating organizations:	7
<i>Lead Organisation:</i>	
Italian Council for Refugees (CIR), Italy.....	7
<i>Partner Organisations:</i>	
- Greek Council for Refugees (GRC), Greece.....	7
- Migrant Helpline, United Kingdom	7
- Caritas Archdiocese of Vienna, Austria.....	8
- Portuguese Council for Refugees (PRC), Portugal	8
- Caritas of Frankfurt (Caritasverband Frankfurt), Germany.....	8
3. Description, aims, beneficiaries of the project	9
4. Comments on European partnership, description of geographical peculiarity	11
5. Activities report and methodology	13
5.1 Implemented activities.....	13
6. Results of the project and encountered obstacles	15
6.1 Results of the questionnaire.....	15
6.2 Exchange visits	18
7. Country analysis and a synoptic scheme of the border services	21
7.1 Transposition of the Procedure Directive	21
<i>Country reports</i>	
7.2 Italy	21
7.3 Greece.....	25
7.4 United Kingdom.....	26
7.5 Austria	28
7.6 Germany	30
7.7 Portugal.....	32
7.8 Synoptic scheme of the border services	35
8. Dublin II Regulation	39
9. Recommendations	43

1. INTRODUCTION

On 17th June 2008, the European Commission presented a Communication on a European common policy on immigration and a strategic plan for asylum, defining ten common principles which must form the basis of the common policy.

In particular, the strategic plan on asylum is centred on three pillars: to reach higher common standards of protection in different member states; to establish practical co-operation between national asylum systems and to enhance common responsibility and solidarity among European reception countries, in accordance with the document "Policy plan on asylum, an integrated approach to protection in Europe". In the first phase of creation of the European Common Asylum System the number of initiatives related to border control and security needs (from Schengen agreements and visa systems to Frontex) far exceeded the measures concerning the rights of third country nationals.

Now that a control system has been agreed, the Commission's legislative work seems to involve the elaboration of a more complete system of guarantees in favour of asylum seekers. The latest developments in the European JHA (Justice and Home Affairs) policy seem to confirm this tendency, as shown by the "European pact on immigration and asylum policy" presented by the French Presidency of the European Union in an informal JHA meeting in Cannes on 7th July 2008. This document contains a strategic plan on immigration, asylum, freedom of movement and international crime fighting. In relation to asylum policy, the French proposal aims to develop an asylum system for Europe, starting from the complete implementation of "The Hague programme" and definition of a common and unique procedure. It also foresees the establishment of a European "Bureau d'apuis" by 2009, which will facilitate exchange of information, experience and practices between competent administrations of different member States. Although not clearly mentioned in the draft pact, we consider that co-operation between border services is one of the most important areas in which this kind of information and best practice exchange has to be put in place.

In any case, border control and the admission of foreigners remain strategic issues for the state members, and this is why international cooperation in immigration and asylum policies is always difficult. As a consequence, co-ordination between services related to refugees and asylum seekers is also problematic because of the huge differences among national legislation systems.

Services at Borders is a project that aims to analyse the lack of harmonisation in asylum national law and, starting from this, to try to find a way to establish practical co-operation in asylum systems of member states involved in the project itself. It involves six European countries, namely Austria, Germany, Greece, Italy, Portugal and the UK. The selection of Member States was based on two factors: first, it was considered important to include Member States representing different geographic areas

which are of special interest to Italy. Secondly, the partners were selected by the level of their interest in participating in such a project.

The project, co-funded by the European Commission under the ERF Programme, has focused research on the legal framework of the border services and practical rules in order to improve efficient co-operation. Implementation of the project had a time-frame of 18 months.

It would not have been possible to carry out the project activities without the full engagement of all partners in the project. CIR is extremely grateful for their cooperation.

Special thanks go to the Italian Ministry of the Interior, Department of Civil Liberties and Immigration, for its support.

2. PARTICIPATING ORGANIZATIONS

Lead Organisation

CIR Onlus, (Consiglio Italiano per i Rifugiati), Italy

www.cir-onlus.org

The Italian Council for Refugees is an independent, humanitarian and non profit-making organisation, founded in 1990 under the patronage of the United Nations High Commissioner for Refugees (UNHCR). CIR works with the aim of empowering and co-ordinating actions in defence of refugees and asylum seekers' rights in Italy, in particular in favour of vulnerable groups of people such as women, victims of gender violence, unaccompanied minors and victims of torture. Among its members CIR counts important humanitarian associations and organisations, the three main Italian trade unions and national and international research institutes. CIR is a member of the European Council on Refugees and Exiles (ECRE), as well as of the Euro-Mediterranean Human Rights Network (EMHRN). CIR has been carrying out an extensive lobbying activity with Parliament and the Government to pass a national comprehensive law on asylum. CIR provides social protection and legal assistance to refugees and asylum seekers at its main office in Rome and through its offices all over Italy, particularly at nevralgic entrance borders.

Partner Organizations

The Greek Council for Refugees, Greece.

www.gcr.gr

The Greek Council for Refugees (GCR) is a Greek, Non Governmental Organization, founded in 1989 to support refugees and asylum seekers in Greece. Through various psycho-social and legal services, it helps them integrate harmoniously into Greece. It is registered in the records of the Ministry of Foreign Affairs as well as the Ministry of Health and Social Solidarity as a Charitable Organization. It is also one of the six Non Governmental Organizations protecting human rights in Greece that are members of the National Commission for Human Rights (NCHR) according to the law regarding the National Commission for Human Rights 2667/98. It is an implementing partner of the United Nations High Commissioner for Refugees (UNHCR), as well as a member of the European Council on Refugees and Exiles (ECRE). It has Special Advisory Status in the United Nations Economic and Social Council (ECOSOC).

Migrant Helpline, United Kingdom

www.migranthelpline.org.uk

Migrant Helpline was founded in 1963 and provides advice and support for asylum seekers, refugees and migrants entering and living in the UK. In 2002 Migrant Helpline was selected to pioneer Induction Centres in the UK and run facilities in both Kent and London to give structured advice and information presentations in a residential setting to newly arrived asylum seekers. The charity also facilitates the integration of refugees

and migrants into the community through a variety of initiatives designed to help these people obtain employment, become proficient in English, find suitable housing, secure education for their children, etc. The charity, partly funded by the UK Home Office, operates across the South East of England and also works prominently on promoting awareness of asylum issues within the community.

The Caritas of the Archdiocese of Vienna, Austria

www.caritas-wien.at

Caritas of the Archdiocese of Vienna is one of the nine independent diocesan Caritas organizations in Austria with official legal status. Caritas Vienna considers itself a partner and advocate of the poor and marginalized and thus addresses the basic needs of the vulnerable, also taking into consideration their social and cultural background. The Social Service of Caritas at the Vienna International Airport (VIE) has existed since 1991 and supports all passengers (Austrians and foreigners), who find themselves in an emergency situation during their stay at the airport. More than 95% of the people helped are asylum seekers: the social support they receive covers psycho-social and legal consultation, responding to basic needs as well as crisis intervention.

The Portuguese Council for Refugees (Conselho Portugues para os Refugiados), Portugal

www.cpr.pt

The Portuguese Refugee Council (CPR – Conselho Português para os Refugiados) has been the operational partner of UNHCR in Portugal since the closing of its Office in 1998, performing the regular legal work in the area of asylum. The legal status to intervene conferred to this NGO as well as to UNHCR in asylum matters was granted under the Asylum Law. Briefly, CPR can be characterised as a non-governmental organisation that provides reception facilities, legal and social counselling, as well as integration assistance to asylum seekers and refugees.

The Caritas of Frankfurt (Caritasverband Frankfurt), Germany

kfd-ffm@web.de

The Refugee Service of the Church at Frankfurt Airport (Kirchlicher Flüchtlingsdienst), Germany has been provided by the Regional Association of the Protestant Church and the Caritas Association Frankfurt since 2004. Before that, the service at the border was called the Social Service at the Airport (Flughafen-Sozialdienst) and was established in 1975. Following a decision by the State of Hesse' government, management of the refugee accommodation centre was taken over by a different organisation in 2004.

The Refugee Service of the Church advises refugees concerning the "Airport Procedure in case of Entry by Air" and gives legal support on the asylum seeking process during the refugee's stay at the refugee accommodation. In addition, a pastor provides pastoral care as well as arranging church services. There are two full-time staff members to give procedural counselling. Three volunteers help with interpreting from French, Arabic and some African languages into German twice a week.

A psychologist visits the refugee accommodation once a week to offer support and helps to assess people with special needs.

3. DESCRIPTION, AIMS, BENEFICIARIES OF THE PROJECT

In developing a common European asylum system, harmonization of border procedures has a strategic function in that which the single European asylum system needs to achieve, in the equality of the opportunities of asking and obtaining international protection in each member State and, even more important, at every border. *Directive n. 2005/85/CE on minimum standards on procedures in Member States for granting and withdrawing refugee status* addresses the specific issue of border procedures, setting out a series of rights that have to be guaranteed to asylum seekers regardless of border procedures stipulated in national legislations. Among these, there is the right of being informed of their rights and duties as asylum seekers, the possibility to consult a lawyer, to have an interpreter and to receive accredited advice on national legislation on asylum before a decision on their asylum application is taken by the authorities. Every European Country has elaborated some kind of legislation or administrative regulation in order to provide such services but, as we verified after consultation with partner associations, reception of the Directive differs considerably among Member States. National legislation still varies widely and as a consequence, the kind and quality of services, as well as the very presence of border services, can change a lot depending on which border the asylum seeker may cross.

In this framework, only enhanced communication between associations running border services themselves can help in creating uniformity: this is why the aim of this project is to overcome the lack of information, exchange and co-operation regarding border services in at least six EU countries, with the prospect of involving, with time, all member states. The objective is to arrive at a common approach regarding implementation of EU legislation related to admission to the asylum procedure - first reception, information and related services. Similar services in the six country partners, including the modalities of providing immediate material reception, have been compared, with particular reference to the transfer of asylum seekers under the Dublin II Regulation. Best practices, including co-operation with border authorities, asylum institutions, UNHCR and NGOs, have been identified. For the purpose of sharing information and learning from best practices, operators have sought concrete experiences of similar services in other countries and have been informed through meetings and constant communication with partners. Border authorities and institutions concerned with asylum have been informed of the situation in other countries. Eventually, the conclusions of the present report aim to achieve the final objective - presenting recommendations to all participants for the transfer of best practices and also disseminating experiences and information to the countries not directly involved so far. Partner organisations will benefit from the training of legal and social operators through meetings, exchange of information and training sessions in the partners' countries. In any event, international organisations, in particular the European Commission and the UNHCR, national authorities and different organisations working with asylum seekers and refugees are also numbered as the final beneficiaries, considering that they will benefit from the experience and information collected during implementation of the project

reported in the present text, which can usefully be read in conjunction with results of the “**Hungarian Helsinki Committee**” project (a comparative study of airports in Amsterdam, Budapest, Madrid, Prague, Wien and Warsaw) to give a broader vision of the subject. Some partner countries have promoted the project and received some interest from the competent authorities regarding provision of a service at ports or airports [eg: at the port of Dover or at the Asylum Screening Unit (ASU) in Croydon where people first claim asylum], where they had not already been provided for through the services of an NGO at the point of claim.

4. COMMENTS ON EUROPEAN PARTNERSHIPS AND A DESCRIPTION OF GEOGRAPHICAL PECULIARITIES

It is worth pointing out that, in addition to the aims of the project already described in the introduction to this report, the European partnership is also useful in order to achieve a further general result, namely a deeper knowledge of countries and associate partners' individual differences. First of all it must be said that the differences start with the very kind of borders where partner associates are working: **CIR** runs different border services, both in seaports and airports; **Migrant Helpline** ran a service at the port of Dover until April 2008; **Caritas Frankfurt, Caritas Archdiocese of Vienna, and the Portuguese Council for Refugees** have an office in the respective main national airports and, finally, the **Greek Council for Refugees**, which works on call at Athens international airport, does not have an office at the border at all.

Thus, the exchange of information has given us an opportunity to learn about the different ways asylum seekers face to enter the territories and to have confirmation of the tendency to use unofficial border points. While in the past the majority of asylum seekers arrived via international airports nowadays the differentiation in the causes of flight, the strengthening and sophistication of passport checks at official borders and the multiplication of illegal organisations trafficking migrants has resulted in arrivals at unofficial entry points which largely exceed those at official ones.

For example, in **Greece** most people reach the country via natural sea borders, or by the river of Evros – a physical border between Greece and Turkey. As is quite understandable, there is no kind of service at these points (though we need to recall that the main official border, the transit zone of “Eleftherios Venizelos” airport does not have a border service either). Naturally, the current legislation allows them to claim asylum once inside the territory.

With relation to the **United Kingdom**, apart from at the main borders, people often claim asylum in-country by presenting themselves to a police officer or at an Asylum Screening Unit (based in Croydon and Liverpool).

Typically, people who arrive in a clandestine way are hidden in the back of a lorry, often coming from the port of Calais in France and in the majority of the cases they seek out the police to make the claim. The police then call the UK Border Agency which either processes the claim or arranges for the person to be transported to a screening unit, or in the case of Kent, taken to the port of Dover. Those claiming asylum at screening units may have entered the country in a clandestine way but have presented themselves at the screening unit instead of making a claim to the police, while others are advised by facilitators or smugglers not to claim at the port of arrival but rather wait until they have gained entry to the UK, as happens in almost every country. People have to prove they have claimed asylum as soon as reasonably practicable. This is no longer as rigorously applied as when it was first introduced in 2003 but nonetheless it has to be approved.

Though its geographical situation is very different, the case of **Austria** turns out to be similar to other countries in terms of unofficial entry. The Country is surrounded by the Czech

Republic, Germany, Hungary, Italy, Liechtenstein, Slovakia, Slovenia and Switzerland and, since all apart from Switzerland are members of the Schengen Agreement, Austria has practically no international official borders apart from that at Vienna International Airport. Nonetheless, less than 5% of all asylum seekers reach the country via the airport and most people enter Austria through the uncontrolled borders with neighbouring countries.

In **Germany**, one of the most important external borders is the airport in Frankfurt. Many refugees arrive here and are picked up by the federal police although Germany is not the destination the refugees want to get to. Unfortunately we do not have any additional information about the situation at other unofficial borders or whether there are possibilities for refugees to enter Germany via those borders because it is not part of the work of the Refugee Service of the Church, which concentrates only on arrivals at the international airport.

Finally, the **Portuguese** CPR also works mainly at official border points, primarily Lisbon International Airport. These interventions represented in 2007 69% of asylum applications, which means that 31% of the requests were presented inside the national territory.

In comparison to 2006, when a total of only 41 asylum claims were submitted at airports, there was a considerable increase in the number of requests presented at border points in 2007 but, even in this case, the number of asylum claims submitted inside the territory indicates that there is a good number of entries through unofficial borders.

All this evidence made us aware that services at borders themselves need to be reconsidered as a more universal service, in the sense that they should be present at every point of access to the territory. In this respect, it would be very useful to take as an example a project run in **Italy**, called “Praesidium” which has been developed in the island of Lampedusa, the main unofficial point of access of irregular third country nationals in Italy. Since 1st March 2006, on the basis of a project by the Italian Ministry of the Interior, UNHCR and its partners, the International Organization for Migrations (OIM) and the Italian Red Cross (CRI), have established a permanent “Praesidium” in Lampedusa. The project is financed by the Italian Ministry of the Interior and by the European Union Programme “Argo” and aims to strengthen reception facilities and services for newcomers, who, in escaping from persecution and armed conflicts, risk their lives crossing the Channel of Sicily. Moreover, the experience of UNHCR in Lampedusa will also be extended to the whole of Sicily through a mobile *praesidium*, and to other places of arrival, such as Kroton in Calabria and Bari in Puglia (Project “Solidarity in Action” of EC). In 2008 “Praesidium III” also foresees the participation of Save the Children in the project.

The main activities of the project are to provide information and legal aid to the newcomers, especially as far as the asylum procedures and identification of vulnerable cases is concerned.

Even if this kind of project cannot be applied to any natural border, in places where there is a big number of arrivals it will be very important to “export” this kind of strategy in order to react to developments in asylum seeker movements.

We are firmly persuaded that sharing knowledge about the functioning of different border services and other points of access between S.A.B. project partners is very useful in extending the concept of “services at borders” in terms of a service given to *a person* in one of the most critical moments of his/her life and in order to guarantee to any asylum seeker concrete access to the correct procedure, regardless of whether he/she has arrived via an official border or not.

5. ACTIVITIES REPORT AND METHODOLOGY

Activities have been programmed in such a way that as much information as possible on the real functioning of border services in the different participant countries is made available.

The shared approach was at the same time theoretical and empirical, aiming at actively involving partners' associations to carry out a useful information exchange through close contact and continuous communication.

The chosen methodology is a process which extends from stock-taking to data comparison, from information giving to practical co-operation and, finally, the dissemination of results in order to render the experience useful and sustainable.

5.1 IMPLEMENTED ACTIVITIES

To this end a series of desk and field activities were planned, starting with a **transnational partnership meeting** on 25th May 2007 (all partners met in Rome for one day). As a result of this event participant organisations were asked to draft a country report to explain the situation in their own country.

During the meeting, with a view to implementing the activity related to stock-taking, partners exchanged their views, learned from each other and identified weak and strong points in different national contexts.

The second relevant block of activities was based on a **questionnaire** which was discussed with and filled in by the partners. It included comparable issues [(national legislation and agreements between public authorities concerning border services; description of case-load, statistical data; procedural aspects, actions related to vulnerable cases, services provided (such as interpretation, health services, immediate accommodation etc)], which were very useful in enabling us to draft a picture of the work of different border services and the results set out in paragraph n. 6.1.

Subsequently, in October 2007 a **second transnational meeting** was held in Venice to discuss the results of questionnaires and activities to be finalised in the months to come. On that occasion the need to consolidate the work already done by the participants through a "**common methodology**" emerged and showed the need to make it more systematic. The "common methodology", which you will find in a form of recommendations (paragraph n. 9) contains some shared guidelines on how to run a border service in the best way, which kind of services the organisations should deliver, and how to assure that there is a permanent connection between existing border services in Europe.

Regarding face-to-face activities, **five exchange visits** have been carried out during the project: the Italian representative visited the UK (July 2007), the English and Portuguese representatives visited Austria (September 2007), the Greek representative visited Italy (November 2007) and the Austrian representative visited Germany (April 2008). Each partner drafted a report on the visit, describing activities undertaken and underlining the

main features of the border services offered by the host country. Unfortunately, the projected exchange visit of the German representative to Italy did not take place because of logistical difficulties encountered by our German partner.

Finally, in October 2007, a meeting in Venice was organised in the form of a **workshop** to allow representatives of the partner organisations to express their views and exchange experiences with the other stakeholders. Among other participants, there were representatives from UNHCR Regional Office in Rome, the Department of Civil Liberties and Immigration of the Ministry of Interior, including the Head of the Dublin Unit, the Prefecture of Venice, and other relevant national asylum authorities, border police officers and those responsible for first reception.

6. RESULTS OF THE PROJECT AND DIFFICULTIES ENCOUNTERED

The majority of the results produced by the project in terms of enhanced knowledge of national asylum procedures and border services from information-sharing among the partners was integrated with some desk research. However, this kind of work raised awareness on one issue, which soon revealed itself as a major problem throughout implementation of the project: the huge differences between national asylum systems, in particular the extent to which border services are concerned. An in-depth view of this aspect is offered in the following paragraphs, in particular in country reports and in the synoptic scheme. In any case, in a premise to the project results, it is worth mentioning some of the difficulties encountered due to the above mentioned differences - for example, the fact that in **Greece** there is no officially established border service - made it difficult to have a concrete feedback on their activities at the airport. Moreover, some partners have no regular access to “Dublin cases” at the airport but only in the country. As a consequence it is impossible to exchange experiences on this. The majority of the partners emphasised that they are not able to influence admission of people to the asylum procedure at the border concretely. Even in Italy, while CIR has more chances to intervene to avoid “refoulement” at the airports, the situation at Adriatic seaports still remains problematic.

Another problem encountered in implementation of the project relates to changes in the work of some partner organisations due to the fact they had to stop their activity in some strategic points of entry. As far as **Italy** is concerned, the border service at the port of Ancona is not under CIR responsibility during 2008. However, from 1/11/2008 CIR will again be responsible for the service. The ‘services at border’ agreements with local Prefectures are subject to a specific contract and as far as the port of Bari is concerned the contract has not been signed for 2008. For the same reason, CIR is no longer in charge of the Border Services at Fiumicino Airport since 1st April 2008. With regard to the **UK**, **Migrant Helpline** also had to stop running the border service at the port of Dover in April 2008, although they had taken on a smaller office in the town. At present, there are no longer any NGOs based at the port of Dover.

6.1 RESULTS OF THE QUESTIONNAIRES

The results of the questionnaires helped us to understand the different functioning of the border services. However, even an understanding of the information contained in this first attempt at analysis has not been easy because of the variety of answers given by the partners. Notwithstanding, it is useful to have a first map of the situation and to obtain much information on different issues, some of which will be reported on the **synoptic scheme**. However, some issues of special interest will be indicated here:

First of all, it became obvious that the independence and **effective functioning** of a border service depends very much of its **location**.

In this respect participating countries present very different situations, not only because of the already mentioned differences between the **typology of borders** themselves (see par. 7 “Country analysis”), but also depending on the possibility the association has to access the transit area and to establish the service before gate checks. As this was one of the most significant results of the confrontation between the partners, we chose to develop this aspect in a more complete review of Country situations, under section no. 7.

Also a good **relationship with the border police** is very important for the border service to be able to work unhindered. It turned out that such relationships need to be established over years. Once an atmosphere of trust and collaboration exists, regular meetings and the supply of information and training of staff can take place, as some partners reported. Concerning the **financial side**, the questionnaire showed that apart from **Germany**, where the border service is financed solely by church, **Greece** where there is no financing, all border services are to a certain extent financed by local/national authorities.

Nevertheless, the border services financed by the authorities also attest to feeling free to act on behalf of asylum seekers.

There was an attempt to understand if special action is taken by border services regarding **vulnerable groups**.

The situation for **torture victims** shows that none of the border services provide direct psychological, psychiatric or other specific support for torture victims directly at the airport or the ports, but all are organised in such a way that they can refer the client in need to a specialised project or organisation once she/he has accessed the country. However, it must be noted that sometimes such counselling services are not available everywhere except, for example, in the cities where the border service has developed such structures, e.g. as the CIR did in Rome. Therefore, the treatment available to the asylum seeker differs depending on the place where s(he) is living.

Regarding **unaccompanied minors** two main problems do exist :

One is the occasional **detention**, which is contrary to all international treaties regarding children's rights. The other is the difficulty of the **proof of age** and consequences arising from this.

Among the participating countries no formal detention is foreseen by law for unaccompanied minors.

However, the project revealed that in the case of **Greece** detention is a common practice also with regard to unaccompanied minors. Therefore, if GRC hears of an unaccompanied minor in detention it tries to intervene to end the detention and also to find proper accommodation for the minor.

Furthermore, in **Germany**, due to the special airport procedure, unaccompanied minors have to stay inside the airport in what is also a kind of detention, until the youth welfare department starts action in favour of the under-aged youth and requests guardianship and legal aid through the courts. In any case, the cost of a lawyer is covered by the City Council of Frankfurt. The German partner points out that, especially for traumatised refugees and unaccompanied minors, accommodation in a closed building and over a long period is highly problematic. Furthermore, it is hard for unaccompanied minors to cope with separation from their parents and living in the midst of adult strangers.

The most important problem border services underline is the difficulty to **determine the age of minors**, since there is no specific or reliable test in this regard.

Also in **the UK** there are large numbers of young people of whose age is not fully accepted or determined. For this category of young person **Migrant Helpline** refers them to specialists, including the Refugee Council's Children's Panel. Whilst age is being determined, Migrant Helpline continues to provide a limited service to these people in allocated accommodation. At least in this way a border service can intervene on this matter. The reform programme for the way in which Unaccompanied Asylum Seeking Children are treated is currently still under consideration. The concept is one of regional assessment centres which would include age determination. NGOs are concerned that such centres would be truly independent and adequately resourced.

To understand the situation at the **border area**, the questionnaire tried to find out if there is a special **accommodation** area for asylum seekers at the border area. Answers showed that in all participating countries, apart from **Greece and Italy** and partially **Portugal**, such facilities do exist.

In **Greece**, in **Portugal** and in **Italy** for example, there are waiting rooms for women and men in the transit area, but no special rooms for unaccompanied minors. In **Greece** people wait for a few hours and are then mostly sent to special detention areas for deportees. In **the UK** there is no separate accommodation for women or unaccompanied minors as there is a maximum stay of eight hours before they are granted temporary admission or are detained.

In **Germany**, before asylum seekers are brought to the refugee accommodation in the transit area, they have to wait at the border police station in the terminal until they have been registered. There are separate rooms for families, women and unaccompanied minors, but they can meet each other all the time and go to each other's rooms.

While the asylum seekers are in the transit/detention area they can only have **access to a lawyer** in some of the countries.

In **Austria**, **Portugal** and **Germany** the possibility does exist. In **Italy** it is possible to have such access under specific authorisation, but in practice it is quite difficult for asylum seekers to have access to private lawyers.

In the **UK** people do not have assisted access to legal representation at the point of claim. Also in **Greece** in the transit/detention area there is no access to a lawyer.

All partners confirmed that people trying to apply for asylum **are sometimes sent back** at the border. This happens for various reasons.

One is the application of the safe third country criteria, as is happening in the **UK**, **Portugal**, **Germany** and **Austria**

Another reason, witnessed by **CIR**, especially at Adriatic ports and with partners in **Austria** and **Germany**, is that the Border Police do not see relevant reasons for refugee to receive asylum and therefore refuse to accept the claim and send the asylum seeker back directly.

Some of the partners report on the possibility **to influence the police decision**, such as in Italy. In other countries, like the **United Kingdom** and **Germany**, in effect there is no such possibility. In **Germany**, if asylum seekers seek the legal aid of an advocate who can act immediately, the lawyer can sometimes stop the rejection and deportation - at least for a period.

The questionnaire was also designed to obtain information about the treatment of **Dublin Cases**.

Only **CIR and the Greek partner** reported ill-treatment by the authorities regarding Dublin Cases.

Most of the border services are, in one way or another, becoming informed about the arrival of a Dublin Case. **Italy** and **Austria**, for example, are informed officially by the Dublin Unit, whereas **Portugal and Greece** receive this information through non-official channels. In **Greece** information is received through the Norwegian Embassy in Athens, the UNHCR Office or friends of the asylum seeker who is being returned. The border service in **Germany** doesn't get informed about "Dublin cases" officially ad well. Sometimes Dublin cases are accommodated at the refugee accommodation, where the border service offers support and advice if needed.

It has been found very important for the border service to have a counterpart in other countries when a Dublin Case is being returned by their country.

6.2 EXCHANGE VISITS

Italy  United Kingdom

Portugal and United Kingdom  Austria

Greece  Italy

Austria  Germany

Each of the partners visiting another border service spent as much time as possible working with the host border service and attending consultations which were taking place during the time of their visits.

All of them also had the possibility to speak with border police and other people and authorities in charge. On those occasions the visiting partners not only gained important knowledge of the visiting countries' system, but also had the opportunity to explain to the foreign partner and authorities the way in which the border service functions in their country.

With this approach, not only were partners able to exchange their experiences, but also other people in some way involved in the procedure could benefit from the project and share their understanding gained as multipliers.

As a result of these visits, partners agreed on the importance of a more systematic exchange of information. For example, during the visit of the **Italian Council for Refugees to Migrant Helpline (from 23rd - 28th of July 2007)** one of the results of the visit was that the Italian and British representatives agreed on the need to establish a direct link when treating problematic Dublin Cases who are to be removed from the UK to Italy.

During the meeting with the person responsible for the Dublin Unit, the Italian representative underlined the fact that the humanitarian clause should be applied more easily in the UK, since they can consider it only in a few cases and very strictly, and in any case only on the basis of family links.

The Italian representative also visited the **Immigration office at the port of Dover**, whose staff is composed only of civil servants, where asylum seekers are fingerprinted and controlled. They stated that the number of arrivals was much lower than in the past since the border control by the Border and Immigration Agency was implemented at that time at the French border. Despite the good relationship between MHL and the Border Immigration Agency (BIA), it is important to underline that the asylum seekers are referred to the services of MHL only after they are detected by the immigration staff, without any previous involvement of the UK partner.

The **British and Portuguese partners**, represented by Migrant Helpline and the Portuguese Council for Refugees, visited the Austrian border service - the **Vienna International Airport offices of Caritas - from 3rd - 8th September 2007**. Caritas maintains two offices here, a small one in the Arrivals Terminal which does not normally receive clients, and a larger one in the Reception Centre which is run by the police. They mentioned that they had the possibility to meet a member of the border police who assured them that they enjoyed excellent relations with the Caritas staff.

During the border procedure, asylum seekers are interviewed by a member of the Airport Police on arrival. An interpreter is always used if the applicant does not speak German. The resulting statement is then faxed to the Asylum Department of the Interior Ministry who decides whether or not the applicant is to be permitted to proceed with the application. If so, they will be transported to a temporary accommodation unit pending transfer to more permanent accommodation.

It should be noted that Caritas does not have a real opportunity to interview asylum seekers before the police.

The exchange visit in **Italy** from the representative of the **Greek partner took place from 19th -24th of November 2007**. When he visited Fiumicino Airport he had the possibility to meet the head officer of the border police who was very surprised to be informed that the police are responsible for the whole asylum procedure in Greece. He noted the good relations between the border police and CIR. The fact that CIR officers do not have access at the moment a person is retained to be checked by the border police when asking for asylum seemed to be a "grey zone" to the Greek partner because in this way nobody can testify if there is full access to the right of seeking asylum at the transit zone or not. That there was the possibility to visit the border services at Fiumicino and Ancona nearly every day of the exchange visit was regarded as being very positive as it gave the Greek partner an idea as how to create a border service in Greece. The Greek partner was very impressed by the good support he witnessed at the Fiumicino border service regarding people returning to Italy because of the Dublin II Regulation and realised for the first time how difficult the situation may be for "Dubliners" who are returned to Athens where there is no support.

During the exchange visit, a meeting was organised with high officers of the Italian Ministry of the Interior and the person responsible for the Dublin Unit. The Greek partner was asked about the general situation of asylum in Greece, the procedure of asylum for the "Dubliners" and the reception conditions for unaccompanied children. Since Italy is very cautious about the situation in Greece, due to the refoulements from Adriatic ports and the treatment of the "Dublin cases" it was agreed to continue to share information in this matter.

The last exchange of Caritas **Vienna to Airport Frankfurt – Church Refugee Service**

took place from 7th - 11th April 2008. The Austrian partner remarked first of all that the reception centre in which the German partners' office is situated inside Frankfurt Airport is huge and equipped with a variety of leisure possibilities.

Regarding asylum, the airport procedure was seen as complex and strict as each and every asylum seeker without a valid passport (the vast majority amounting to 90%) has to undergo the airport procedure, regardless of whether it is a family, an unaccompanied minor or a pregnant woman. 50% of asylum applications are rejected as "apparently unfounded" , with the result that the asylum seeker is not allowed to enter Germany but will be detained in the reception centre. Furthermore the Austrian partner was astonished that there are only three days to appeal against this negative decision and is of the opinion that the Court of Appeal which decides within two weeks does not operate very seriously because in most cases it agrees with the "apparently unfounded" decision.

He also gained the impression that exaggerated force by officers dealing with asylum seekers who are to be deported is a huge problem.

Unfortunately, the **German partner**, working in one of the most important airports in Europe (Frankfurt), was not able to come to Italy for the exchange visit foreseen by the project due to shortage of staff.

7. COUNTRY ANALYSIS AND SYNOPTIC SCHEME OF THE BORDER SERVICES

7.1 TRANSPOSITION OF THE PROCEDURE DIRECTIVE

Italy transposed the Procedure Directive with decree n. 25 of 28th January 2008 in force from 2nd March 2008. As for other partner countries, **Austria** has transposed the Directive in Austrians Asyl Act 2005, which came into force on 1st January 2006. **Germany** transposed into German Asyl legislation on 19 August 2007 and - except for some articles – it has already come into force. In **Portugal**, the directive on asylum procedures was transposed in the National legislation and came into force on the 1st September 2008 under Law 27/2008, 30 June.

Greece transposed the Directive through Presidential Decree n. 90/2008. As far as **United Kingdom** is concerned, the Government is still revising some amendments. In any case the Directive on procedures was implemented in 2007 by Regulation n.3187

7.2 ITALY

According to article 11 sub-section 6 of Immigration Law 286/98 as modified by law 189/02, CIR ran, as from 2001, eight border services on behalf of the Local Prefecture: at the International airports in Rome-Fiumicino and Milan Malpensa, at the ports of Venezia, Ancona, Bari, Brindisi and Trapani, and at the land border of Gorizia.

However, at the beginning of 2008 the Prefecture of Rome changed the rules for the assignment of the Fiumicino Border Service and decided that it had to be subject to a specific contract and then launched a call for proposals; the service has been assigned to another organisation for the period from 1st April to 31st December 2008. The same happened for the service at Bari for 2008. However the information contained in this paragraph is based on CIR's multiannual experience, regardless of which services it currently operates.

On the basis of the law, *"the beneficiaries of the services are those who lodge an asylum application and foreigners who intend to stay in Italy for over three months"*.

The subsequent **Decree of 2nd May 2001** of the Ministry of the Interior establishes that *"asylum and - in general - support to aliens who intend to ask for protection is the main objective of the border service"*. Furthermore, the most vulnerable cases, such as unaccompanied minors, women victims of violence or people who have suffered from torture and in general foreigners in need are the main categories to assist at the borders.

The decree strengthens the requisite of proved competence and experience in the matter of asylum and assistance to asylum seekers when selecting the organisation for the operation of the services.

In the above services, CIR ensures: legal and social counselling; interpreting service; search for accommodation, contact with local authorities/services; production and distribution of informative documents on specific asylum issues directed to both asylum seekers and bor-

der police.

A particular Italian requirement is the legislative provision that the service must be placed “*in the transit area, where possible*”¹. This gave way to a conflictive interpretation due to the fact that, for example, in seaports a transit area is hard to identify and the law contains no indication on whether the service is to be established before entry point checks or not.

As a consequence, only at the airport of Fiumicino in Rome is the border service located before border checks so that asylum seekers can have direct access to it as soon as they arrive. In practice, the border police may intervene with the asylum seeker before he/she has the possibility to contact autonomously the service. This is in particular the case of entry controls effected right under the plane. Therefore, in some cases the NGO may not be aware of what happens in those circumstances. However, the situation in **Fiumicino is a good example of a well-located and effective border service** and, as we could verify with this project, it is the only one with these characteristics among those existing in Italy and in the other country partners. Effectively, in Malpensa airport, even if CIR has access to the whole transit area, the border police can control passengers before they meet the service staff. At **seaports** the situation is even more limited as CIR operators simply cannot directly access arriving vessels to provide potential asylum seekers with social and legal assistance. They can reach the asylum seeker only after border police authorization. In those cases the intervention of the service is of little help in monitoring rejections and the law establishing border services itself is not fully applied. In absence of clear instructions from the Ministry of the Interior to the border police, the carrying out of the services depends very much on individual willingness of local border police authorities.

Generally speaking, CIR has a good relationship with the border authorities, but there are still some problems in handling individual cases, especially at **Adriatic ports**. It happens, in fact, that the border police tend to send foreign nationals, including potential asylum seekers, immediately back to Greece, from where they had arrived on ferries often hiding in trucks or containers. CIR as well as UNHCR and other humanitarian organizations have indeed questioned if this practice is in conformity with Community Law, in particular the Dublin II Regulation, the Schengen border Code, as well as national legislation regarding rejection at borders. For example, in Venice the border police continues – for the most part - to send both aliens and potential asylum seekers *tout court* back to Greece without any formal rejection order. Foreign nationals are driven back without any guarantee of re-admission to the Greek territory.

In the first 8 months of 2008, CIR border service in Venice came to know of **348 arrivals**, accessing only **110** effectively interviewed by CIR. Among these 25 persons applied for asylum and were admitted to the asylum procedure.

In fact, looking at figures of arrivals at Venice seaport, we may doubt that all potential asylum seekers had access to the services foreseen for them at the border.

On 16 February 2008 legislative decree n. 25 of 28th January 2008 on the “**Directive on Procedures**” (*Directive n. 2005/85/CE on minimum standards on procedures in Member States for granting and withdrawing refugee status*) was published in the Italian Official Gazette and it has been in force from 2 March 2008 . On the basis of the new legislation, the border police can no longer proceed with pre-screening regarding *inter-alia* the even-

1 Art. 11, sub-section 6 of Law 286/98 as modified by law 189/02

tual application of exclusion clauses stipulated in art. 1F of the 1951 Geneva Convention contained in previous national legislation,² to be examined by the Eligibility Commission. This means that there is no longer an intervention on the part of the police authorities on whether or not to admit a person as an asylum seeker to the territory: once the asylum request has been lodged, asylum seekers must enter the territory and have access to the recognition procedure. No accelerated procedure at the borders, nor detention in transit areas is foreseen by law.

Even if, of course, the legislation establishes equal rules for all border services, in practice the concrete implementation differs widely from border to border, depending also on the caseload. For example at Fiumicino Airport during 2007 and part of 2008, the majority of arrivals was mainly composed of Dublin Cases (642 Dublin cases in 2007 and 233 cases first 3 months in 2008), while at Malpensa Airport the caseload was mostly represented by spontaneous asylum seekers (1082 asylum seekers in 2007).

Fiumicino Airport		
<i>Year</i>	<i>Asylum applications</i>	<i>Dublin Cases</i>
2007	49	642
2008 (Jan-March)	14	233
Malpensa airport		
<i>Year</i>	<i>Asylum applications</i>	<i>Dublin Cases</i>
2007	1082	105
2008 (Jan-Aug)	488	58

This means that the services offered at the two borders change according to the needs of caseloads.

This is also true with specific reference to accommodation facilities. For example, associations encounter serious difficulties, mainly when trying to accommodate vulnerable cases, because of the lack of specialised reception centres on one hand and the dysfunction of the accommodation system as a whole on the other.

According to CIR experience, there is real need for better co-operation between border services at the airport and authorities competent for reception.

Italy has transposed the **Reception Directive** 2003/9/CE through decree 140/05 (*D. Leg.vo 30 maggio 2005 n. 140 implementing the Directive 2003/9/CE on minimum standards for the*

2 Art 1 sub-section 4 Law 39/90 as modified by Law 189/02

A foreign national who intends for ask refugee status will be refused entry into Italian territory whenever, as result of objective controls by border police, it is proven that the applicant:

- a) has already been granted refugee status in another State;
- b) comes from a State, not that of origin, which has adhered to the Geneva Convention in which he has been staying for a period of time. A time necessary for the transit of the relative territory to the Italian frontier will not be considered as "Staying for a period of time" the alien has arrived from a mere transit through the territory of this state en route to the Italian frontiers is not considered as "staying for a period of time";
- c) Is in the situation set out in article 1 section F of the Geneva Convention;
- d) Has been convicted in Italy of one the crimes set out in art. 380 sub-section 1 and 2 of the penal Code or is proven to represent a danger to State security or to belong to criminal, drug-trafficking or terrorist organisations.

reception of the asylum seekers in the Member States) on the basis of which only asylum seekers are entitled to be accommodated. The situation regarding the reception conditions for asylum seekers in Italy is based on the first national asylum system, the National Asylum Programme (“*Programma Nazionale Asilo*” - Ministry of the Interior, ANCI and UNHCR) then named SPRAR (Protection Service for Asylum seeker and refugee) established by law 189/02.

The system (art 1 sexies Law 189/02) is designed to provide accommodation, food, counselling, including legal counselling, initial vocational training, initial language training and special programmes for vulnerable groups, such as minors or disabled persons. Asylum seekers are entitled to such assistance for six months. In 2007 the accommodation places amounted to 3,041, out of which 329 were for vulnerable groups (41% of asylum seekers). This number is far from meeting all accommodation requests, considering that the system is also for refugees and people holding subsidiary protection.

On the basis of Reception Decree n. 140/05 asylum seekers apply for the accommodation through a specific claim to the police headquarters and are later sent to the local Prefecture. The Prefecture applies to SPRAR in order to verify availability.

If no place is found, the research is extended by law to reception centres (former CID – “identification centre” and now named CARA: “reception centre for asylum seekers”). If there are no places in the SPRAR, or in CARA and in First Reception Centres either, Reception Decree 140/05 provides that asylum seekers without means receive a financial contribution. While waiting for a decision from the Eligibility Commission, the authority determining refugee status, asylum seekers are not allowed to work, except when their claim for asylum has not been examined within six months. In this case the reception Decree 140/05 foresees the possibility of issuing a permit of stay for asylum claim, which allows asylum seekers to work.

In practice, however, the abovementioned procedure is not respected everywhere, in the territory of Rome, while it was implemented in the Malpensa Airport area, especially in case of huge number.

Since the Reception Decree is not the *facto* entirely implemented for those arriving at the airport, CIR has faced many problems in accommodating asylum seekers arriving at Fiumicino Airport due to the lack of accommodation available to receive people without a residence permit. Thus, the CIR border service usually used some private reception centres for the first days after asylum seekers left the airport. In the case of vulnerable people at the airport, there is no specific support for them provided by the authorities, with the consequence that often the client is supported by means of the CIR service. This is also a problem when both asylum seekers and aliens, have to stay at the airport for the period of time which the police need to verify their legal condition. In that case no accommodation is provided.

In case of sick people, the service verifies the condition of the client through an interview. CIR then refers them to the First Aid Service at the Airport.

As for psychiatric issues, there is no specific service available. The operators face some difficulties in solving these cases, which are anyway very exceptional. Only after continuous lobbying by CIR with the local Prefecture, and thanks to the support of the Ministry of Interior, at the beginning of 2008 a reception centre - specifically for asylum seekers and Dublin Cases coming from the airport (“Centro Enea”) - was provided, with the result that nowadays those people are easily admitted to the centre without any formalities.

7.3 GREECE

There is no reference in the Greek Legislation to services at borders. Until now, there has been no service by the Greek state or NGOs at the borders providing legal and socio-psychological support to asylum seekers.

Greece has several problems regarding asylum seekers' admission and asylum procedure. Firstly, the Greek Council for Refugees does not have an office at the airport in Athens or at the seaports so, when potential asylum seekers arrive, the police inform the Greek Council for Refugees staff who then go to the airport on an "on call basis". Due to the lack of a special legal framework concerning reception at the borders, the organisation needs an authorisation to meet asylum seekers in the transit area; this can be obtained by sending a fax to the detention centres and to the Ministry of the Interior and Public Order.

With relation to admission procedure, in the airport there is a waiting room in the transit area where people sit for a few hours. Then, if they are not recognised as asylum seekers, they are sent to a special detention centre for deportees, or to another detention centre in the same building away from the transit area. There is separate accommodation for men and women. There is an **accelerated procedure** at the airport and those who are recognised as asylum seekers and Dublin cases are admitted to the territory for the recognition procedure.

The asylum procedure is based on the Presidential decree 90/2008 that implements the **Directive on Procedures**, and partially on Presidential Decree 61/1999. Asylum applications must be examined by the Police. In case of applications from asylum seekers who are detained at ports or airports, the accelerated procedure can be applied and usually the above mentioned examination is taken on the same day. The asylum seeker is getting interviewed by the Police, who afterwards - if she/he is released - issues an identity card (pink card). The pink card allows the asylum seeker to stay in Greece for a period of six months, and in practice this card is usually renewed.

The asylum seekers detained in the transit area of airports or seaports or at the borders (if the accelerated procedure is applied) have the right to appeal against the decision which rejects her/his asylum claim. The time limit is of 8 days from the date the decision was handed to the asylum seeker. If a final decision is not taken within 4 weeks from the date of her/his application of asylum, she/he is allowed to enter the territory of the country and according to the law, the normal procedure is followed.

The greatest problem in Greece is the difficulty for the Greek Council for Refugees to have access to asylum seekers and to all illegal aliens in the transit area. To visit these people it is necessary to have the names of each one of them, but in practice this is almost impossible. There is a lack of interpreters at the airport and communication with the "Dublin cases" is quite problematic.

Other difficulties that arise in the asylum procedures are due to the fact that the police do not know much about the procedure itself. For this reason special training for the border police should be introduced.

The Greek Council for Refugees is wise to the question relating to "refoulement" cases that are taken to Greece from the Adriatic ports (in particular, from the Italian borders) in violation of Dublin II Regulations. In this respect, enhanced co-operation has been established between CIR and the Greek Refugee Council throughout the project.

However, the absence of any kind of organisation in the Greek seaports made every attempt to reach the signalled Dublin cases personally difficult, even if it was at least possible to get more information about the signalled cases. Moreover, the association reports several cases of “refoulement” of asylum seekers from Greece to Turkey.

As there is no legal provision identifying the service and its beneficiaries, it is impossible to identify them systematically: the Greek Council for Refugee offers legal counselling, interpreting and social assistance to all asylum seekers who have been signalled by the border police and who ask for its support in the country and at the airport, which means that only a few asylum seekers obtain assistance at the border.

On 13 November 2007, Greece adopted a Presidential Decree n. 220/2007 transposing the **Reception Condition Directive**. On the basis of this decree, the State should provide shelter to asylum seekers and a daily allowance sufficient to meet their basic needs. In practice, the reception conditions in Greece still remain very problematic, including the Dublin cases arriving at Athens Airport, who remain – in practice - without any form of accommodation.

The **directive on asylum procedures** has been implemented in very recent times (Presidential decree 90/2008) but, in fact, it does not help to create a specific legislative reference on services at borders.

7.4 UNITED KINGDOM

To the extent to which the British partner association is concerned, there is no longer any service at the border as, since April 2008, they have had to stop their operations at the port of Dover and they have not been replaced by any other association.

Migrant Helpline intervention in the transit area and before point of entry checks is impossible and they can see the asylum seekers only after they have been interviewed by a Home Office unit.

The screening interview can take place at the border before an office of the UK border and immigration agency, or inside the territory, before the Home Office Asylum Screening Unit, either at Croydon (south of London) or in Liverpool. At the screening interview the applicant should not be asked detailed questions about the merits of the asylum claim. This first screening only aims at recording the asylum seekers’ personal details and their route to reaching UK; this is partly to check whether or not they can be returned quickly to a “safe third country”. At this stage, a decision on putting the asylum seeker into a “detained fast track”, which is an accelerated legal process, and sending him to a detention centre may be taken. Applicants who come from a safe third country, who entered the UK without valid documents, or whose request is thought to be “clearly unfounded”, or Dublin cases, are more likely to be detained. In any case, there is no detailed provision clearly establishing the cases in which detention may be applied, so the impossibility for independent organizations to receive asylum seekers before the authorities’ interview is of particular concern in terms of avoiding refoulement.

Moreover, for detained asylum seekers it is very difficult to obtain any kind of legal advice even if it is foreseen by law, because the decision on the asylum request is taken in a very short time.

In a second stage, the partner association can have access to all asylum seekers after

they have lodged an application in the country, or after the border and immigration agency or the asylum screening unit contact the association by sending asylum seekers for assistance and accommodation. It can provide all the asylum seekers with initial accommodation (IA) in the framework of a structured support system run by independent NGOs, named 'Initial Accommodation Wraparound Services', which is one of the strong points of the UK asylum system.

No legal advice is provided by the organisations, but NGOs providing this service must use staff who are accredited to level 1 under the Office of Immigration Standards Commissioner (OISC); the service offers briefing sessions covering rights and responsibilities, living in the UK, understanding the asylum process, understanding the documentation, a 'drop-in' advice clinic to answer specific questions or issues. They can see a government produced DVD on the asylum process and a briefing on the their dispersal to another part of the UK following the IA stage (which normally lasts about 3-4 weeks at present). The IA stage includes access to medical services including emergency services, primary care and maternity care. Referrals are also made to specialist organisations such as the Medical Foundation for the Care of Victims of Torture. NGO's will also give accredited advice on how to access legal representation.

Nevertheless, because of the absence of non-governmental organisations at the ports or screening units, asylum seekers cannot get independent advice and information at the points of claim. For people who are routed through 'overnight accommodation', many may go days before having access to important information such as support entitlements, accessing accredited legal representation, understanding the medical system in the UK, opportunities to contact friends or relatives. In addition to that, lack of an independent NGO service at the borders or at the screening unit may result in the absence of an early diagnostic one-to-one session, currently available at the point of claim, to advise those seeking to lodge a claim. There are concerns that there may be a delay in the identification of vulnerable people, such as victims of torture, which may prevent early intervention and there is lack of any kind of general advice, even in leaflet form, on asylum procedure.

The Directive on procedures has been transposed in national legislation by 2007 Regulation n. 3187 that, together with amendments to the Immigration Rules (HC 395), in part implements Council Directive 2005/85/EC, while many other parts of the Directive did not require implementation as consistent provisions were already made in existing domestic legislation. Since 2007, legislation regarding asylum has been inserted in the Home Office five-year strategic plan on asylum, which includes the New Asylum Model on asylum procedures. On the basis of this, applicants who lodged their requests after 5th March 2007 will be followed by a "case owner" who will deal with their application until the end of the procedure. Provision of legal advice at the point of claim may mean greater understanding and compliance with the process.

In the UK the Home Office decides how to deal with the asylum application after the screening interview and can process the asylum application under the regular procedure of NAM or, as explained before, under the Detained Fast Track' (DFT) system. MHL signals key concerns about the speed and fairness of the process, mostly in relation to the treatment of vulnerable cases. There is evidence of children, torture survivors and trafficked women being wrongly detained. Moreover, many asylum seekers are not legally represented at appeals and some people spend many months in detention after the claim has been refused as they cannot be removed.

Dover Port Cases

For 2007 MHL estimates that about 250 that used their service arrived through the Port of Dover. The majority of cases arriving at Dover Port are at present routed to overnight accommodation in London. From April 1st 2008 Migrant Helpline has no longer been funded to provide independent advice to people going through the overnight process. For January and February 2008 MHL assisted only 22 local arrival cases through Dover operation.

Regarding reception conditions, NASS (National Asylum Support Service), the Government department responsible for supporting destitute asylum seekers formed in December 1999, was the relevant authority until the introduction of the New Asylum Model; it is now the UK Borders Agency (UKBA).

During the Reception and Induction Process provided by Migrant Helpline the asylum seeker gets help from a caseworker to fill out the NASS form. UKBA can provide both accommodation and cash support for food and clothing. If asylum seekers have accommodation, for example with friends or relatives, they can apply for cash support only. To be eligible for support from NASS they have to present proof of the following: that they have applied for asylum, that they are destitute, and that they have applied for asylum as soon “as reasonably practicable” after arrival in UK .

7.5 AUSTRIA

The Social Service of Caritas at Vienna International Airport (VIE) has existed since 1991 and supports all passengers (Austrians and foreigners) who get into an emergency situation during their stay at the airport. More than 95% of those assisted are refugees.

A contract with the Ministry of the Interior was established in 2003 and the presence of a legal adviser during airport procedures is now guaranteed by law. The airport procedure is regulated by the special provisions of articles 31-33 of the Austrian Federal Law concerning the granting of asylum (Asylum act 2005).

The beneficiaries of the service are asylum seekers who lodge an asylum application and those who are deported to Austria via the airport due to the Dublin Regulation and remain in the transit area and/or the initial reception centre.

In Austria Caritas has two offices, one in the initial reception centre and one in the transit area, but the possibility to meet asylum seekers without previous notice from the border police depends on whether there are gate checks or not. If there are no gate checks it is possible to meet asylum seekers without previous notice.

The social support of asylum seekers covers psycho-social and legal consultation, looking after their basic needs as well as crisis intervention. Asylum seekers are informed about the asylum proceedings in single and group discussions. The individual situations of the clients are clarified and realistic prospects discussed. In some cases return consultations are offered. The partner association assists asylum seekers by keeping in contact with the authorities and helping in writing appeals. In cases where there is a prolonged asylum procedure and asylum seekers have to stay at the airport for long periods, there is a regulated ‘routine of the day and week’ with possibilities of employment.

Since 2003 the project “*Support of asylum-seekers at the VIE*” has been operational under a promotion contract between the Interior Ministry and the Archdiocese of Caritas Vienna.

The strong point of the service is that Caritas has access to the international area of the Airport and that they are free to act on behalf of asylum seekers. However, they are not present during gate checks and they have no access to border police offices in the transit area. As concerns recognition procedure, it must be noted that in Austria all relevant steps regarding those who claim asylum at the borders are carried out inside the airport itself. After an application for international protection is made by an alien at border control, he/she is referred to the initial reception centre, which is a two-storey police building within the airport premises. It is an enclosed area consisting of multiple rooms with a total of 35 beds, two lounges, two kitchens and a courtyard. A police station is manned day and night; access is granted only to Caritas employees and attorneys.

First there is a short questioning conducted by the border police and then within one week a full examination through the Federal Asylum Agency takes place. During this examination an interpreter and a legal adviser (no legal representative) are present.

If there are no concrete reasons for being recognised as a refugee in accordance with the Asylum Law and the competent authorities intend to reject the application, they must communicate their intentions to the United Nations High Commissioner, as the dismissal of an application for international protection may be effected only with the consent of UNHCR. The admissibility procedure cannot exceed 6 weeks (art. 32/4 Asylum Law). Generally speaking the application at the airport can be refused on the basis of third country criteria or Dublin II responsibilities. The asylum seeker can file an appeal against this notification within seven days with the Independent Federal Asylum Review Board, which also has to give a decision within two weeks. There is no further legal remedy against a rejected appeal and the Aliens Police organises the deportation.

This procedure is based on the Austrian Asyl Act 2005, as modified after the transposition of the **Decree on asylum procedures**, which came into force on 1st January 2006.

Number of Asylum Applications at Vienna International Airport:

<i>Year</i>	<i>Asylum applications</i>	<i>Airport Procedures held/Rate</i>
2006	736	249 / (28%)
2007	775	301 / (38,7%)
2008	142	
<i>January</i>	49	
<i>February</i>	31	
<i>March</i>	21	
<i>April</i>	17	
<i>May</i>	24	

As concerns **Reception** conditions, Austria has implemented the Directive through the Austrian Basic Welfare Support Act 2004. Austria implemented the so-called Basic Provision Agreement (“Grundversorgungsvereinbarung”) in May 2004. This agreement between the federal government and the federal state governments implements the provisions of the Reception Directive. Pursuant to the Basic Provision Agreement, the federal government and the federal states share responsibility for the reception of asylum seekers and associated costs. The federal government (Ministry of the Interior) is responsible for refugees during the initial admission procedure, which takes place at the beginning of the asylum process. Following completion of the initial admission procedure, responsibility shifts to the respective federal state.

7.6 GERMANY

The Refugee Service of the Church at Frankfurt Airport has been established by the church and is not legally recognised. Today, it is still financed by the church only, and is completely independent from any governmental body, while the State of Hesse is responsible for refugee accommodation, healthcare and so on. Therefore, it is possible to give asylum seekers all the necessary information and support on the proceedings which they are entitled to by law. However, the partner association's office is not directly located in the transit area inside the airport but in a building outside which is an extension of the transit area and has been established specially to accommodate refugees. Being directly placed next to other institutions and public authorities, NGO staff is not clearly distinguishable from public authorities to refugees.

Moreover, NGO operators are not always informed when an application for asylum of a refugee is being rejected directly at the border and they do not have the possibility to act on behalf of asylum seekers at gate checks.

On the other hand, the office and the refugee accommodation centre are in regular contact with the refugees and do not need any permission or have to notify the federal police in advance when they wish to hold an interview.

The beneficiaries are all asylum seekers brought into the refugee camp by the border police, including some Dublin cases.

The association offers social counselling but no direct legal advice. In the case of rejection by the Federal bureau they refer clients to a lawyer.

The German Procedure for asylum claims lodged at the borders is based on § 18a AsylVfG, which came into force on 19/08/2007. This paragraph implements the **Directive on Procedures** regarding the border procedures. On the basis of the Directive the decision on admission to the recognition procedure, or immediate rejection of refugees, which can happen if the applicant has entered Germany via a safe country without a valid passport or with a falsified passport, has to be taken at the airport by the border police. This means that if, during a passport check, the federal police detect a person with a falsified passport or without a passport, and the individual asks for asylum, they will be sent to the refugee accommodation where they will have to make an asylum request immediately to the federal police, who will decide whether or not to forward the case to the Federal Office for Migration and Refugees or to proceed with rejection.

With respect to the recognition procedure, as a rule it is entirely carried out inside the airport. The duration of the basic procedure is 19 days. The Federal Office for Migration and Refugees has one to two days to decide on an application for asylum after which the asylum seeker has two to three days to file an objection against a notification of rejection from the Federal Office for Migration and Refugees. He/she is entitled to free legal advice by a lawyer specialized in asylum matters. If he/she accepts the legal representative, he will lodge a petition for interim legal protection and will bring a suit against rejection of the application for asylum at the Administration Court in Frankfurt. The Administration Court decides on this court injunction during the course of two weeks. If it happens that the application for legal protection is rejected the refugee has to leave the country.

If a positive decision follows, the asylum seeker is allowed to enter the country.

In case of rejection of an application for asylum the federal police will immediately try to send the refugee back. However, normally the forced return fails, since most of the asylum seekers are not in possession of valid travel documents.

The provision of relevant documents from a competent representative office sometimes takes only a couple of days, but can take weeks and even months. Since the federal police cannot keep the rejected asylum seeker at the airport any longer, they have to appear before a custodial judge. A custodial judge can order detention for the refugee if there is a possibility of procuring a passport replacement within three months.

The custodial judge can also allow the rejected asylum seeker to enter the country. Usually a rejected asylum seeker is detained for three months and after that there is revision of the custody.

Until the new Residence Act had become effective in August 2007, a rejected asylum seeker also had the right to voluntary stay in the accommodation for refugees inside the direct transit area of the airport. When the Administration Court came to a negative decision the federal police would ask the rejected asylum seekers whether they want to stay at the airport voluntarily. If they didn't want to stay at the airport voluntarily, the decision was not reviewed. The Federal Ministry of the Interior, however, had the power to permit a rejected asylum seeker to enter the country on humanitarian grounds.

With the new Residence Act, according to Sec. 15 (6), the Federal Police can now keep the asylum seeker at the airport without a ruling of the local court for thirty days. The police normally file an arrest warrant application at the local court in Frankfurt shortly after arrival of the refugee. As a rule, the local court orders an arrest at the refugee accommodation of the airport for a period of three months.

Some of the rejected asylum seekers, who agreed to stay at the airport voluntarily, remained at the accommodation for refugees up to one year.

In the matter of services offered by the partner association, it is noted that interpreters and lawyers can be provided to help traumatised refugees as well as extremely vulnerable refugees including, if needed, a meeting with a psychotherapist who comes into the office once a week on a regular basis.

Once a week the service also offers a church service that is held in turn by a catholic or a protestant priest, to give spiritual support to those who request it.

Since the association is the only NGO which monitors the proceedings independently, it has been able to point out recurring problems to responsible people, such as the head of the accommodation centre or the federal police.

Number of Asylum Applications at Frankfurt Airport:			
2007:			
<i>Asylum applications</i>	<i>Male</i>	<i>Female</i>	<i>Children</i>
Total 789	584	142	63
Allowed entry			
Total 629	447	123	59
Refoulement			
Total 103	85	14	4
2008 (01/01/2008 – 14/08/2008):			
<i>Asylum applications</i>	<i>Male</i>	<i>Female</i>	<i>Children</i>
Total 495	328	104	63
Allowed entry			
Total 390	240	89	61
Refoulement			
Total 62	50	11	1

As regards **the reception conditions**, Germany has implemented the Directive 2003/9/EC “Reception Conditions Directive.

At Frankfurt Airport the Directive is not being met with regard to Family Unity: article 8 and 14(2) oblige Member States to maintain the family unity of asylum seekers for whom housing is provided. A new Residence Act (put into effect 28th August, 2007) has led to a difficult situation at the refugee accommodation centre. However, refugees whose request for asylum has been rejected are detained and have to stay at the refugee accommodation centre until they leave the country or another decision is made. Those who have travelled with under-aged children will be asked by the federal police to sign an agreement that their children are staying at the accommodation voluntarily. The parents can also agree to have the children taken to a children’s home inside the country while they stay at the accommodation. This procedure is followed because judges cannot order an arrest for minors. However, to allow the minors to stay at the refugee accommodation while not being under arrest is against the law. This is why federal police have an interest to separate parents from their minor children if the parents are under arrest. The family unity is thus not ensured.

Furthermore, unaccompanied minors are kept together with adults at the refugee accommodation centre in Frankfurt/Main, although the Directive addressed special needs for minors. In addition, minors aged over 16 are legally of age and are therefore treated like adults. For any other law in Germany legal age is reached with the 18th birthday.

As concerns vulnerable asylum seekers, it has to be underlined that in Frankfurt Airport there is no identification procedure in place to recognize vulnerable people seeking asylum and, as a result, no adequate rehabilitation services are provided.

7.7 PORTUGAL

The service at the border run by the Portuguese Council for Refugees is located in Lisbon Airport, not in the transit area, but in the temporary installation centre located at the airport and managed by public authorities (*Gabinete de Asilo e Refugiados*, of *Serviço de Estrangeiros e Fronteiras – SEF*). The service, as far as interpretation and legal aid are concerned, is foreseen by Asylum Law 15/98 of 26 March 1998. It is financed by the Ministry of the Interior and UNHCR, as CPR is UNHCR’s implementing partner in Portugal. However, the presence of the association in the temporary installation centre is not regular, as it works on the basis of *ad hoc* interventions: this means that it can only receive applicants sent by the border police, after the presentation of an asylum claim. In any case they can ask for information on the presence of potential asylum seekers in the transit area, if they are recognised by a relative of the applicant.

In regard to border procedures, the same law, article 26, determines that all those claiming asylum at the borders shall remain in the international area of the port or airport for the duration of the admissibility stage. The duration of the admissibility stage in these cases amounts to a maximum of five working days. Border procedures are then finalised to decide whether to admit the asylum seeker or not, while the recognition procedure is carried on inside the country.

The asylum law makes provision for the submission of claims filed at entry points,

which have shorter deadlines than the processing of asylum requests presented inside national territory.

In accordance with article 26 (1) of Asylum Law and article 4 (2) of Law 34/94, the authorities inform the competent Court as soon they know that the presence of the asylum seeker in the international area of the airport is likely to exceed 48 hours.

Asylum claims are then lodged before a border official who must send the file to the Asylum and Refugee Division of SEF. Border officials should receive appropriate training, according to the provisions contained in article 23 (2), but CPR is not aware of developments in this area.

As in processing of requests presented inside national territory, SEF must inform UNHCR and the CPR, who may issue an advisory opinion on the application within 48 hours after an interview with the asylum seeker (art. 24).

The Director of SEF has five days to reach a substantiated decision of rejection or admission of the request (if the Director of SEF does not decide within this deadline the asylum claim will be considered admitted and the asylum seeker may enter national territory).

The asylum seekers at the airport have now the right to lodge an appeal with a suspensive effect, according to art. 25/1.

At the present, the only possibility to revise a non-admissible decision issued by the Director of the Aliens and Borders Service is to appeal to administrative courts.

To access the legal aid system, asylum seekers, with the support of the CPR, have to initiate a specific process in the Social Welfare Institute, followed by another at the Lawyers' Bar Association, after 72 hours – article 25/1.

Regarding rejected asylum seekers at border points, this time frame means that the appeal has no practical effect since asylum seekers are returned as soon as possible to the place where they started the journey [(article 20 of Asylum Law 15/98 - *the return of the asylum-seeker to the point from where he/she started his/her trip, or if this is not possible, to the State where the travel document, on which he/she travelled, was issued or to another place where he/she may be admitted (a host third country)*]. CPR thinks that such procedure is of little result. Practice shows that asylum seekers at border points are regularly removed to the country from where they have come at the expense of the air company that brought the irregular migrant to Portugal. No formal assurances from such country concerning the security of the asylum seeker or his/her protection against subsequent refoulement have been obtained by the deporting authorities to CPR's knowledge.

Concerning returns to so-called "host third country", no assessment is carried out by national authorities to confirm if the asylum seeker is protected effectively against refoulement.

The most common attitude by Portuguese authorities towards third countries to which rejected asylum seekers are returning is simply to assume that they are host third countries

The Asylum Law provides the possibility for the rejected asylum seeker to request postponement of the return for 48 hours to provide a lawyer with all necessary elements to lodge an appeal. However, this period of time cannot be deemed sufficient to nominate a lawyer through the above described "legal aid system".

The directive on **asylum procedures** is transposed in the National legislation and entered into force on 1st September 2008.

In 2007, there were a total of **127 interventions** of CPR legal staff at **Border Points**, mainly at the Lisbon International Airport. In comparison to last year, there was a notable increase in the number of requests presented at border points (in 2006 a total of 41 asylum claims were submitted at airports).

As for the **first semester 2008 is concerned, 49 asylum applications** were submitted at Lisbon International Airport. The CPR pays special attention to the requests presented at border points having in mind the special procedure within Asylum Law, characterised by short time limits and in practice less guarantees recognized to asylum seekers.

As regards the matter of **reception**, following the Council of Minister's Resolution n° 76/97 that determined the creation of separate detention areas for asylum seekers in national airports, the Aliens and Borders Service (*Serviço de Estrangeiros e Fronteiras-SEF*) carried out construction work in the Lisbon Airport International area in 2000. The new conditions offered by this reception centre improved the previous poor conditions encountered by asylum seekers presenting their claims at Lisbon International Airport. At this point in time, they include provision of basic needs such as food, hygiene, social and health care. In accordance with this same Resolution, asylum seekers detained in the reception centres located in national airports are entitled to the provision of legal support that up to now has been provided by CPR in the quality of UNHCR's implementing partner in Portugal. Legal officers of the Portuguese Refugee Council have had access to the reception centre thus allowing asylum seekers to be eligible for the same legal guidance provided to asylum seekers inside national territory.

Law 20/2006, of 23rd June approves complementary rules concerning the legal framework of asylum seekers and refugees, insuring full transposition to internal Legislation of Directive 2003/9/CE, of 27th January which lays down minimum standards for the **reception** of asylum seekers in Member States (*Lei n.º 20/2006, de 23 de Junho*). The new legal framework of Law 20/2006 brought no significant changes in the pre-existing rules of Asylum Law 15/98, 26 March regarding information, issuance of documentation, freedom of residence and movement, medical assistance, access to education, access to work and material assistance.

The new legislation, however, sets out clear rules on a number of issues that up to its entry into force were insufficiently or not at all regulated by Asylum Law 15/98. This is the case, first of all, in the eligibility criteria applicable to asylum seekers who wish to benefit from material assistance and free health care during the asylum procedure. Whereas in the past, and even today, practice shows that all asylum seekers benefit from material and free health care assistance if they choose to do so, the new rules enshrined in Law 20/2006 could represent a move towards a more restrictive regime.

Furthermore, Law 20/2006 also establishes rules concerning the reduction and cessation of reception conditions and related procedural safeguards not previously included in the Asylum Law. This is the case, for example, of hidden financial means.

Very importantly, Law 20/2006 establishes a number of additional obligations concerning the reception of minor asylum seekers that clearly surpass the previous legal framework. These include the need for competent State Services to provide all necessary rehabilitation and psychological support to abused or neglected minors, special lodging conditions for minors and unaccompanied minors and the obligation of all staff dealing with minors to benefit from adequate training.

Law 20/2006 was incorporated in the new asylum law.

7.8 Synoptic scheme of the Border Services

<i>Name of the service</i>	United Kingdom Migrant Helpline Initial Accommodation Wraparound Service.	Germany Refugee Service of the Church (Kirchlicher Fluechlingsdienst)	Greece No service at the borders	Austria Social Service at Vienna International airport	Portugal CPR – Conselho Portugués para os Refugiados – Legal Service	Italy "Reception services to provide information and assistance in favour of third country nationals who intend to apply for asylum or third country nationals who are allowed to stay in Italy for periods of more than three months" Ref art 11, co 6 Law 286/98
<i>Location</i>	Croydon in London. Situated close to the Asylum Screening Unit. There are no longer any NGOs based at ports in the UK.	In the transit area of Frankfurt-Airport especially designed for asylum seekers, inside the refugee accommodation.	No border services, but <i>ad hoc</i> intervention for asylum seekers in the transit area, Athens International Airport	In the transit area of Vienna Airport + another one within the airport premises in the initial reception centre situated inside the police department.	Not in the transit area of Lisbon Airport. The association is present at the temporary installation centre located at the airport and managed by the SEF (aliens and border services), that gives association operators access to this area.	8 border services* (5 ports, 2 airports, 1 inland border) Fiumicino (Rome) Airport in the transit area, Malpensa Airport in the transit area, after gate checks 5 ports (Brindisi, Venezia, Bari, Trapani, Ancona). 1 inland border Gorizia (open border).
<i>Opening hours</i>	Monday to Thursday 09.00/17.00 and Friday 09.00/16.30	Monday to Friday, 09.00/17.00.	<i>Ad hoc</i> intervention for asylum seekers in the transit area.	The office in the initial reception centre operates everyday, 09.00/21.00. The office in the international airport operates Monday to Friday, 10.00/18.00.	<i>Ad hoc</i> intervention on demand	Fiumicino airport operates Monday to Saturday, h. 09.30/18.00; Malpensa airport (managed in cooperation with Caritas) as far as Cir. is concerned operates Monday to Friday, h. 12.00/18.00 and Saturday 10.00/13.00; Ancona seaport operates Monday to Saturday h. 09.00/17.00, plus 24h availability on call; Bari and Brindisi seaports operate from Monday to Saturday, 5 h a day (opening hours vary); Trapani seaport operates from Monday to Friday, 5 hours a day (opening hours vary); Venice seaport operates Monday to Saturday, h. 09.00/15.00; Gorizia inland border operates Monday to Friday h. 09-17.00

	United Kingdom	Germany	Greece	Austria	Portugal	Italy
<i>Kind of service provided</i>	<p>Interpreting: Yes, provided by MHL</p> <p>Provision of information and assistance: Welfare support. Information on asylum procedure and services in the territory. There is no permanent legal service, but the association can direct the asylum seekers to an accredited legal bureau.</p>	<p>Interpreting: Yes, provided by UN-Refugees Help</p> <p>Information and assistance: Information on asylum procedure; refugee counsellors also give legal advice, and can organize a lawyer in cases with particular needs.</p>	<p>Interpreting: Yes, provided by the Greek Council for Refugees</p> <p>Information and assistance: Information on asylum procedure and legal assistance on call.</p>	<p>Interpreting: Yes, provided by staff members or other interpreters organized by Caritas</p> <p>Information and assistance: The small office in the transit area does not usually receive clients; In the other office legal and social counselling is provided by social operators, as well as information on asylum procedures.</p>	<p>Interpreting: Yes, provided by CPR</p> <p>Information and assistance: Legal counselling provided by CPR lawyers, from the first interview until the decision of authorities</p>	<p>Interpreting: Yes, provided by CIR through Governmental funds.</p> <p>Information and assistance: Social and legal counselling provided by CIR in the transit area (at the airport) or on board the vessel (at seaports). Initial emergency accommodation in the territory. Information provided on services in the territory.</p>
<i>Composition and number of staff</i>	<p>Reports: quarterly to trustees of the charity, quarterly and monthly to the Home Office under the terms of the Grant Funding agreement.</p> <p>In Croydon initial Accommodation the direct staffing comprises of: - 6 General Advisers - 4 Asylum Seeker Advisers - 1 Administrator - 1 Age Dispute</p>	<p>Reports: for internal use, sponsoring units (church) and partners (UNHCR, Pro Asyl).</p> <p>In the refugee service: 2 staff members (refugee counsellors) and 4 volunteers.</p>	<p>Reports: quarterly to the Ministry of the Interior and also to the Federal Police Department.</p> <p>8 employees and a conscientious objector performing community service</p>	<p>Reports: quarterly to the Ministry of the Interior and also to the Federal Police Department.</p> <p>3 legal officers.</p>	<p>Reports: semi-annual activity reports, sent to the authorities SEF (Serviço de Estrangeiros e Fronteiras) and Ministry of the Interior</p> <p>3 legal officers.</p>	<p>Reports: monthly or every three months to Prefectures (then to the Ministry of the Interior)</p> <p>At Fiumicino airport 7 social and legal operators on a shift basis. Each operator works alone. Malpensa: 3 social and legal CIR operators together with Caritas Others: 3 social and legal operators For all services interpreters are provided by phone or directly in case of need.</p>

	United Kingdom	Germany	Greece	Austria	Portugal	Italy
	<p>Adviser - 1 Special Needs Adviser - 1 Team Leader - 1 Assistant Manager Interpreters are employed on a casual basis (as needed).</p> <p>The advisers are “social/welfare” specialists. They give immigration advice up to level 1 of the “Office of Immigration Standards Commissioner” (OISC). They do not give specialist legal advice.</p>	<p>Service not foreseen by law. Financed by the Church</p>	<p>No legislation foreseen. Ad hoc interventions financed by the Greek Council for Refugees</p>	<p>Service foreseen under a contract between Caritas and the Ministry of Interior, financed by the Ministry of Interior and Caritas.</p> <p>During the interview of asylum seekers, a lawyer of the Ministry of Interior is present by law. Duties: information about the procedure, makes no appeals.</p>	<p>Foreseen by law, no. 15/89 dated March 20th Article 52. Financed by the Ministry of Interior and UNHCR</p>	<p>Services foreseen by Immigration law, no. 286/98, article 11, par. 6 as modified by Law 189/02. Financed by the Ministry of Interior, through Local Prefectures.</p>
<i>Legal framework</i>	<p>Service foreseen by law: Acts of Parliament (The Immigration and Asylum Act 1999 - The Nationality, Immigration and Asylum Act 2002 - The Immigration, Asylum and Nationality Act 2006)</p> <p>Migrant Helpline’s initial Accommodation service is funded under a grant agreement.</p>					

	United Kingdom	Germany	Greece	Austria	Portugal	Italy
<i>"Safe third country and safe country of origin" criteria</i>	An application can be refused at the border on the basis of safe third country and "clearly unfounded" criteria.	A safe third country list and a safe country of origin list are obligatory under the Asylum Procedure Act (AsylVfG) and are provided by the German Government.	No safe third country nor safe country of origin list is foreseen by law.	Safe country list is foreseen by law. Asylum seekers coming from a so-called safe country of origin have the burden of proof.	No safe third country nor safe country of origin list is foreseen by law.	No pre-screening is foreseen at the border and no safe third country nor safe country of origin criteria are applied.
<i>Treatment of "Dublin cases":</i>	Not officially involved at the border, but Migrant Helpline assists them in the country.	Not officially involved at the border, but the Refugee Service of the Church can assist them during their stay at the refugee accommodation in the airport.	Not officially involved at the border, but GCR assists them in the country	Not officially involved at the border, but Caritas assists them in the country.	Not always informed by SEF and officially involved at the border, but CPR assist them in the country	Officially involved by the Dublin Unit and CIR assists them also in the country.
<i>Implementation of Directive 2003/9/CE:</i>	Directive has been implemented in full. Ref. to the NASS (National Asylum Support System)	Directive has been implemented through paragraph 44 to 54 of AsylVfG of 19/08/2007	Directive has been implemented through Presidential decree 220 of 13/11/2007	Directive has been implemented through Austrian Basic Welfare Support Act 2004.	Directive has been implemented through Law 20/2006, 23 of June 2006	Directive has been implemented through Legislative decree 30 May 2005, no. 140, which entered into force on 19 th October 2005
<i>Implementation of Directive 2005/85/CE:</i>	Directive has been implemented through Regulation 2007 no. 3187	Directive has been implemented through paragraph 18 a) of AsylVfG of 19/08/2007	Directive has been implemented through Presidential Decree n 90 of 11.07.2008	Directive has been implemented through Austrians Asyl Act 2005, which entered into force on 1st January 2006.	Directive has been implemented through law 27/2008, 30 of June and entered into force on 1 st September 2008.	Directive has been implemented through the Legislative decree 28 January 2008, no. 25, which entered into force on 2 nd March 2008

* Fiumicino Airport and the port of Bari have been assigned to another organisation since 1st April 2008.

8. DUBLIN II REGULATION

During the project, it has become evident that monitoring the application of the Dublin II Regulation and sharing information about individual cases has been complex due to the fact that not all the services working at the borders specifically provide assistance to the “Dublin cases”. Italy, for example, through border service at airports (Malpensa and Fiumicino), is more involved in giving assistance to the “Dublin cases” transferred from other Member States, than in offering assistance to those cases to be sent to another Member State. The case is different for **Austria** and **Germany**, where assisting the “Dublin cases” is possible also before their transfer, since they are present in the accommodation centres situated inside the airport area.

It stands to reason that the type of assistance offered by the organization running the border service varies case by case. Where the border service receives the “Dublin case”, action taken in his/her favour will be more frequently linked to social and assistance aspects. Where border service deals with “Dublin cases” before their transfer is able to verify whether the Dublin Unit decision is correct, to check the state of health of the Dublin case, and to inform the border service of the receiving Member State in order to arrange any possible assistance to the arriving person.

Anyway, the project has provided evidence that border services should be more inter-linked. All partners agree on the importance for asylum seekers to be well informed on the Dublin II Regulation, especially those who are kept in detention before their transfer (e.g. United Kingdom).

The above is particularly important considering that the transfer of many cases with health problems, psychiatric pathologies and severe depression has been registered. For these categories of people the removal from one State to another may cause serious practical problems and a feeling of disorientation. As a consequence, adequate reception becomes an essential element for the “Dublin case” and for the border operator himself. In this regard a quick and effective exchange of information among border services is fundamental but, if not possible given the different characteristics of each service, the respective Dublin Units should allow a close collaboration with them.

On this subject it is important to highlight that – among partners in the project – only **Italy** receives official notice from the Dublin Unit regarding the arrival of the “Dublin cases” at the airports. However, sometimes the sending Member States have proceeded with transfer of Dublin cases without previous communication to the Italian Authorities, causing serious practical problems to border staff and police authorities facing emergency situations (e.g. a Dublin case in a wheelchair).

Given the above, only through direct interviews to asylum seekers at the border is it possible to gain knowledge about their vulnerability. Sometimes the sending countries are inclined to supply incomplete information on the real health conditions of the “Dublin case” in arrival to avoid possible refusal of their *prise en charge*.

In these cases, all partners agreed that it should be the role of the border service to make a declaration through reports to the local Prefecture or the competent Authorities, as CIR does also with the Dublin Unit to point out any possible dysfunction in the system. During the year 2007, CIR dealt with 642 Dublin cases at Fiumicino Airport. Among these, those returned by plane from Norway and **the United Kingdom** could be considered the most difficult and problematic.

As regards **Greece**, it is clear how a correct monitoring of the implementation of the Dublin II Regulation is fundamental. As already reported at par. 7.2, the work carried out by CIR staff at Adriatic seaports confirmed that many foreigners arrive in Italy irregularly by boat from Greece. CIR staff, although present at the seaports, are not always able to ascertain if arriving third country nationals - who intend to apply for asylum in Italy - are effectively allowed to lodge their application before the police send them back to Greece; or if they had been informed about the possibility to apply for asylum and consequences of the Dublin II Regulation.

The project has permitted a major exchange of information with the Greek partner on cases removed from Italy but, given impossibility in Greece to intervene at the seaports and lack of the names of people removed, the only possible action has been to ask for information from the Greek police, without, however, an effective check on actual admission to the territory.

Since the situation in **Greece** is alarming with regard to the protection of asylum seekers and Dublin cases, as declared in several reports³, it is evident that a Greek NGO should monitor arrivals at the seaports and intervene in favour of those arriving.

The following cases show how the services can represent real support for Dublin cases even, if sometimes the services cannot prevent maltreatment or dysfunctions.

Case n. 1:

The first case is a 27-year-old Eritrean girl, returning from England to Italy in application of the Dublin II Regulation.

In sending her back the English authorities put the woman's health at risk.

At Fiumicino Airport, when she spoke to CIR operator at the border office, she only said she had a very copious menstrual flow. The operator decided to call a first-aid doctor and it transpired that she had had an induced abortion only four days before her return to Italy. The surgery had taken place in the doctor's office at the detention centre where she was being retained.

The girl was hospitalised in *Grassi Hospital* in Ostia, near Fiumicino, where she received adequate treatment. She was discharged after two days and the CIR operator accompanied her by taxi to "Collatina", one of the places in Rome where the Eritrean Community lives. The girl preferred to join Eritrean people and her religious priest instead of being accommodated in a hostel or in one of the accommodation centres we normally use.

In the meantime, a letter was sent both to the Police Headquarters of Crotona (where according to the border police the girl was supposed to go within five days) and to the

³ See reports: "The truth may be bitter, but it must be told" edited by ProAsyl. October 2007 and UNHCR Position on the return of asylum seekers to Greece under the "Dublin Regulation", 15/04/2008.

Police Headquarters of Rome, in order to save her a long journey by train to Crotone. Finally, the Police Headquarters of Rome authorised the girl to continue her asylum procedure in Rome. In view of the inhuman treatment the girl suffered in the United Kingdom, CIR wrote a letter of complaint to the Italian Dublin Unit in order to obtain clarification from the British authorities. The girl's air travel, only four days after an induced abortion, was against the guiding principles of the Dublin II Regulation and any ethic and moral rules.

The result of our action has been a claim from the Dublin Unit to the British Authorities in order to highlight that before the girl's arrival in Italy no information on her health conditions had been supplied.

Case n. 2

Another serious case concerns an Eritrean girl sent back from Norway to Italy on the basis of Dublin II Regulation. The girl, born in 1989, arrived at Fiumicino Airport seven months pregnant.

When she arrived she had a blood loss and for this reason the first-aid department was called to hospitalize her. In the meantime, the CIR operator contacted the Dublin Unit, the Border Police and the Police Headquarters of Caltanissetta, a city in Sicily very far from Rome, in order to avoid the girl once discharged having to go to Caltanissetta as foreseen by law.

Thanks to co-operation among the various services involved, the Border Police invited her to present herself to the Police Headquarters of Rome instead of Caltanissetta.

The CIR operator went to the Grassi Hospital in Ostia, where the girl was hospitalized, to see her and to make sure of her health conditions.

Two days later, the girl was transferred to the Hospital of Viterbo because she risked a premature delivery.

When the main CIR office heard of this they contacted a local organization in Viterbo in order to follow-up the case.

After having applied for an accommodation solution to the SPRAR (Protection System for Refugees and Asylum Seekers), the girl was accommodated in a centre in Sezze.

A few days CIR later was informed that the girl had left the centre.

CIR head office has, however, informed the Dublin Unit on the case, outlining its concern about the risk the woman - being seven months pregnant - had run during the journey.

The Dublin Unit promised to transmit an official complaint to the Norwegian Authorities responsible for such treatment.

Case n. 3

Mr. U., Turkey, Dublin- readmission agreement

In May 2007, Mr. U. filed an application for asylum at the Vienna International Airport. After that he was brought to the Initial Reception Centre, where the airport asylum procedure started. During his first interview, he said that his nationality was Kurdish, and could be proved by some documents. In the following days a second interview with the Austrian Federal Asylum Office took place. During this interview, Mr. U. was informed that a Romanian Visa had been found in his passport, so a Dublin-readmission agreement with Romania would be initiated. Mr. U. was very surprised by this procedure because he want-

ed to seek asylum in Austria. After the interview the asylum seeker was very confused because he didn't understand the European law concerning the Dublin 2 Convention. During the time he stayed in the Reception Centre many other Kurdish asylum-seekers were allowed to enter Austria. This situation about his own destiny depressed him more and more. In the context of our consulting service, Caritas employees explained to him the juridical basics of the Dublin 2-Convention. He understood the juridical basics but he was very afraid of going to Romania because he feared worse treatment in Romania than in Austria, or being sent back immediately to Turkey from Romania. Caritas employees talked with him about his case and tried to find an appropriate solution for his situation. Voluntary return to Turkey was no option for him because he was still hoping to receive asylum in Austria.

He became more and more depressed because he didn't get an answer as to whether he was to be sent to Romania or not. The personal talks and activities offered by Caritas were very important for him because he was not in a good state so we tried to support him as well as we could.

After 48 days in the Reception Centre Mr. U. was taken into detention for deportment because he still had no decision with regard to Romania.

In the course of the assistance, the personal talks and activities offered by Caritas were very important to Mr. U, because he was a very young asylum seeker, not even twenty years old and his mood changed very often, sometimes desperation, sometimes extreme euphoria, so it was important to him and to us to stabilise him emotionally.

9. RECOMMENDATIONS

The findings of this report make clear the need to establish a new common European border service model suited to the needs of protection seekers, bearing in mind that their arrival at the border represents a crucial moment due to the uncertainty of being admitted to the asylum procedure and the risk of rejection.

Differences observed among 6 Member States examined during the implementation of the project may well be reflected more widely across the 27 Member States.

Disparities in the legislation and practice of EU Member States mean that a refugee's chances of being admitted to a country and of finding protection can vary dramatically from one Member State to another.

What should be done? There is a need to re-think border services, which should be built around asylum seeker needs.

Amendments to the Dublin II Regulation and Asylum Procedures Directive would be the most direct means to achieve harmonisation in line with international protection standards as called for by the Amsterdam Treaty and the Council of Tampere. More is required, however, than amendments alone. The gap between law and practice is one of the main challenges.

The following recommendations of this report are addressed to European Union Institutions and to Member States collectively, with a view to strengthening the application of common criteria for the functioning of the border services as well as elaborating EU Guidelines in line with protection standards. In this respect, UNHCR, ECRE and some specialised NGOs could play an advisory role.

Quality control mechanisms with regard to border procedures are also essential to address the matter and in this respect the future European Asylum Support Office (EASO) could play a key role.

ORGANISATION OF THE SERVICE

Legal framework

■ Border services should be foreseen by National and European law. In the frame of the envisaged revision of the Council Directives on Reception Conditions of asylum seekers and on Asylum Procedures it should be made obligatory to all Member States to institute by national law services for legal counselling and first reception of asylum seekers arriving at borders.

Independence and NGO involvement

■ Border services should be independent in carrying out their activities even though they must count on public funding.

■ Border services should be delivered by specialised NGOs and not by immigration autho-

rities - who are more concerned with security concerns and whose primary aim may not be the assistance and counselling of protection seekers - so that there will be a balance between security needs and human rights protection.

Specialised NGO staff are better equipped than immigration authorities to establish a relationship based on trust and understanding with protection seekers, who arrive in stressful conditions.

By law, NGO staff should have the possibility to offer protection seekers, “Dublin cases” and potential asylum seekers counselling and welfare support, preferably prior to the immigration control, or at least immediately after, when they are still within the transit/screening area.

Training

■ A common training programme should be envisaged by law for immigration authorities and border service staff who should be qualified and well-trained on refugee issues - that includes periodic refresher courses on national and European refugee law developments and country of origin information (COI). In developing this programme, sufficient account should be taken of the existing expertise and resources of UNHCR and NGOs in the field.

Location of the service and privacy

■ Border service should be placed in the transit or screening areas as appropriate.

■ Visibility and information on border services, which should be well signalled, has to be ensured.

■ All protection seekers, prior controls and/or in the transit area, should have free and immediate access to border services.

■ Border service staff should have full access to the transit area as a whole, and therefore to all potential asylum seekers, to those who have already made an asylum request as well as to “Dublin cases”.

■ Privacy should always be guaranteed. Confidentiality and data protection protocols should be set up.

Opening time and availability

■ Border service should be open at least 12 hours per day and the availability of staff should be ensured 24 hours per day.

■ Sufficient staff to deal with all asylum seekers should be guaranteed.

■ Access to telephone should be ensured.

SERVICE TO THE ASYLUM SEEKERS

Legal counselling and assistance

■ Counselling on the asylum procedure should take place upon arrival of asylum seekers at the border, before the interview by the immigration authorities.

Information on asylum seekers' rights and duties and on national and European legislation, verbally or in writing, in a language that the protection seeker can fully understand, must be ensured.

Documentation and brochures should be handed to asylum seekers upon arrival.

Interviews must be conducted on the basis of UNHCR Guidelines ("*Interviewing applicants for refugee status*").

Procedural guarantees

■ Decision on no admission to the national territory and/or to the asylum procedure should always be in writing, motivated and notified to foreigners in their own language or in a language they understand.

■ *Rejection at the borders* or deportations should be monitored by border service staff in order to verify if asylum seekers are fully aware of the contents of the negative decision and the possibility to exercise the right for an effective remedy, at least where there is a real risk of *refoulement*.

Dublin II cases

■ Border service staff should have access to asylum seekers transferred to other Member States under the terms of the Dublin II Regulation, in order to establish particular needs of the person and transmit the information to correspondent border service in the destination country.

Accommodation in border areas

■ Accommodation, even when "detention"/retention is foreseen at the border, should always be in line with all relevant human rights standards and be limited to a very short period of time.

■ Adequate accommodation should always be gender oriented.

■ Vulnerable persons, like unaccompanied minors, pregnant women, elderly and sick persons, should not be accommodated in the transit area, but should immediately be allowed entry and be accommodated in adequate centres.

■ Where accommodation at the border is envisaged, the following criteria must be fulfilled:

- Medical treatment
- Permission to meet visitors
- Access to phones and Internet
- Qualified and skilled care staff.
- Child care during the time parents or family members have interviews with border service staff or authorities.

Treatment of vulnerable cases

- Skilled and qualified border service staff and interpreters should be trained in dealing with vulnerable persons, including **torture victims or victims of violence**.
- Border services should receive information from the respective Dublin Unit on arrivals of asylum seekers transferred under Dublin II Regulation, in order to prepare adequate reception of vulnerable cases.
- **Unaccompanied minors** should immediately be admitted to the national territory and be accommodated in adequate centres.
- Interviews with minors should preferably be conducted by social workers and psychologists.
- A legal advisor should assist unaccompanied minors during the border procedure, in particular in case of age dispute, and inform, if necessary, the competent Juvenile Court.

COMPOSITION AND TRAINING OF STAFF

- Border service staff should be skilled and fully qualified, and have knowledge of another language.
- Staff should be sufficient to deal with all arriving asylum seekers and in relation to the particular condition of the border concerned.
- Composition of staff should be gender balanced.
- Border service staff should be composed of:
 - legal adviser
 - social/welfare specialist
 - psychologist
 - anthropologist with a good knowledge of COI
 - team of interpreters/intercultural mediators
 - lawyer
- Interpreters/intercultural mediators should be independent from those employed by immigration authorities.
- In case of need, specialised doctors should have access to asylum seekers.
- Border staff should periodically undergo training and refresher courses which could be delivered by UNHCR.

OPERATIONAL ASPECTS

- At the beginning of interviews with asylum seekers, border staff should clarify their independent role from immigration authorities.
- Border services at national level should have access to a COI data base.
- Periodic supervision by the psychologist to border staff should be envisaged.
- Due to the importance of close cooperation between border service staff and immigration authorities, meetings should be held regularly to improve the quality of service. Meetings among border service staff, immigration authorities, Dublin Unit, Ministry of the Interior, Welfare Authorities, judges, should be also envisaged.
- Border service should work in close cooperation with other associations which provide further social and legal assistance in country.

FINANCING

- While being independent from State authorities, border service should receive public funding. If a commercial tender is required under national law for the selection of the body running the border services, the condition should not disadvantage non-profit NGOs. Particular credit should be given to experience in the sector and availability of qualified staff.

NETWORKING

- A permanent network among border services should be established at national as well as European level to exchange information on developments in national and European legislation and best practices. This is essential to ensure a more adequate and standardised treatment of asylum seekers at borders, in particular of “Dublin cases”. The network should be monitored and supported by the EASO.