Asylum in Europe: the situation of applicants for international protection in 2021

The Asylum Information Database (AIDA) is a database managed by the European Council on Refugees and Exiles (ECRE) containing detailed information on asylum procedures, reception conditions, detention, and the content of international protection in 23 European countries. The country reports are written by national experts in cooperation with a variety of stakeholders, ranging from civil society organisations and lawyers to national authorities. The reports are edited and verified by ECRE. The database is widely relied upon by European and national policy makers, legal practitioners, and Courts.

This briefing provides an overview of key trends in asylum in Europe in 2021 as documented in AIDA. It demonstrates that while asylum systems are in place and functioning across Europe, unfortunately the rights of people in need of international protection are still regularly violated, and significant gaps in national asylum systems continue to be reported. Reception systems came under pressure in many countries, while detention of asylum applicants remained commonplace, rather than being a limited exception.

1. New increase in the number of asylum applications

The year 2021 saw a sharp increase in the number of asylum applications compared to 2020 in the EU and associated countries (EU+). The low number of applications in the previous year was primarily due to travel restrictions resulting from the pandemic, including border closures. There were, though, specific events in 2021 that generated more displacement, including the Taliban takeover of Afghanistan and the worsening security situation in Northern Iraq. Significantly, Syria, Afghanistan and Iraq were the main countries of origin of first-time asylum applicants in Europe in 2021.¹

According to Eurostat, 632,185 people applied for international protection in 2021 in EU Member States.² Of these, 535,000 were first-time applicants, while the number of subsequent applications reported was 86,500.³ The number of first-time applicants rose by 28.3% (or 118,000 applicants) compared with the previous year, with 417,100 new applicants in 2020. The figure is below the level registered in 2014 (530,600).⁴

The increase in arrivals and in asylum applications was noted in the vast majority of AIDA country reports. To illustrate, as concerns international protection applications, Austria saw an increase of 160% in 2021 compared to 2020, Cyprus an increase of 50%, and Germany an increase of 36%.

There were some notable exceptions to this trend. For example, the number of people arriving in Greece decreased by 31.7% in 2021. The figure under-represents the number of people

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³ To this figure should be added the number of subsequent applicants in Denmark, Cyprus and Sweden, as the three countries did not provide data.
actually attempting to access asylum in Greece, given that extensive pushbacks at the Greek-Turkish land borders and in the Aegean Sea were reported during the year.

The number of arrivals in Malta was also low, mostly as a consequence of national policies. Since May 2020, and throughout 2021, the Armed Forces of Malta drastically decreased rescues at sea. In 2021, the Maltese Government continued to deny disembarkation to individuals rescued at sea, in particular where the rescue was conducted by NGO vessels. Finally, only 38 people managed to apply for asylum in Hungary due to changes to the asylum system introduced in 2020 that severely limit access to the procedure. In these cases, the drop in the number of asylum applicants did not result from changes in displacement trends but can instead by largely ascribed to the policies applied by national authorities.

Despite the overall increase in applications, lower numbers of crossings were registered on the Mediterranean route. In contrast, the death toll both in the Mediterranean and in the northwest Atlantic saw a steep rise. As reported by UNHCR, around 3,231 people were recorded as dead or missing at sea, more than double the number of deaths registered in 2020 and in 2019.5

2. Restricting access to asylum

Access to asylum has been a constant cause for concern in recent years. In many cases, unlawful border practices hinder the possibility for persons in need of protection to cross European borders. There were reports of such practices from more than half the countries covered by AIDA, namely Austria, Bulgaria, Croatia, Cyprus, France, Greece, Hungary, Italy, Malta, Poland, Romania, Slovenia, Spain, Serbia, Türkiye, and the UK. The array of measures used by national authorities to carry out said practices includes direct pushbacks at land or sea borders; informal readmission agreements; denial of access to the territory and/or to the asylum procedure; and the temporary reintroduction of border controls. These measures affect thousands of persons in need of protection and violate the right to asylum and the fundamental principle of non-refoulement, as enshrined in EU and international law. While numerous actors have condemned such practices, and shed light on the increasing violence and other human rights violations at the borders,6 both their scale and normalisation increased in 2021. On this topic, the UN Special Rapporteur on the Human Rights of Migrants concluded that “pushbacks remain de facto general policy in many States and continue to seriously impede the enjoyment of the human rights of migrants who cross international borders.”7

5 UNHCR, UNHCR data visualization on Mediterranean crossings charts rising death toll and tragedy at sea, 10 June 2022, available at: https://bit.ly/3QHr4TI.
Despite reports indicating that pushbacks have become “standard practice” in Greece, the Government remains opposed to the development of an independent border monitoring mechanism and no effective investigation has been conducted into the allegations. Evidence of boats being pushed back at sea in 2021 was also documented in Italy, Malta and Cyprus, while access at the Ceuta and Melilla border points in Spain continued to be severely restricted, and problems of violent police practices persisted.

Unlawful border practices continued to be registered in countries on the “Balkan route”. For instance, in Bulgaria, the national border monitoring mechanism registered 2,513 alleged pushback incidents affecting a total of 44,988 individuals in 2021. Reports on Croatia indicate that 9,114 people were pushed back from Croatia to Bosnia and Herzegovina (BiH) and 928 people from Croatia to Serbia, and 28,737 persons were pushed back from Romania to Serbia. In addition, 72,787 people were pushed back to Serbia from Hungary, three times the number registered in 2020.

In a landmark decision in July 2021, a Regional Court in Austria recognised the existence of practices of “summary returns” of migrants without assessing their individual claims, a decision since upheld by a higher court. People were also refused entry at internal borders without a proper assessment of their protection needs at the French, Spanish and Italian borders and in Italy’s Adriatic ports.

In addition to such practices, some countries introduced controversial legislative changes that suspended non-refoulement obligations at their borders, effectively limiting access to the asylum procedure and the right to asylum. Most notably, the situation at the Polish-Belarusian border was the basis for the amendments to national law in Poland that allow for an expulsion in a simplified procedure and restrict the possibility to apply for international protection for people intercepted in the border area. Slovenia also adopted amendments to the Foreigners Act that allow the National Assembly to close the border in case of a “complex migration crisis”. In the UK, a reform to the asylum system which dramatically curbs the possibility for people to access protection was passed in the form of the Nationality and Borders Act.

3. Limited alternatives for legal access to the territory

The denial of access at borders has not been accompanied by an increase in organised and safe pathways to protection, such as resettlement so there remains a lack of pathways to obtain access to the territory for people in need of protection. Governments remain reluctant to increase the possibilities for refugees to come to Europe in an organised and safe manner, which should exist in addition to obligations under European

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10 DRC , Border monitoring snapshot and factsheets, available online.
Union (EU) and international law to assess the protection needs of those arriving at the borders. While the launch of the first Talent Partnerships announced by the European Commission\(^\text{13}\) might represent a positive step in this direction, the impact and scope of the partnerships remain to be seen.

Of the organised pathways, in 2021, family reunification remained a lengthy and complex procedure in various countries (specifically Belgium, Cyprus, France, Germany, Greece, Italy, and Malta), with administrative obstacles often hindering the right to family reunification for refugees. In some countries (e.g. Cyprus), only refugees can access family reunification, while beneficiaries of subsidiary protection are not eligible. In Germany, only 5,958 visas were issued for family members of beneficiaries of subsidiary protection although the annual quota is 12,000 people per year, i.e. only half of the foreseen quota was used. The right to family reunification is often limited to core family members (e.g. in Belgium and Sweden), although other family members may be accepted under special circumstances.

Other instruments to provide a pathway for people in need of international protection include resettlement, humanitarian admission programmes, community sponsorship programmes, and the issuance of humanitarian visas by national embassies. According to the EMN Annual Report 2021 on Migration and Asylum, many countries did not resettle any asylum applicants in 2021 (Italy, Hungary, Poland, Malta, Croatia, and Bulgaria) and the overall numbers of resettled people are low (with some important exceptions such as Sweden and Finland).\(^\text{14}\)

The use of humanitarian visas is not widespread and generally its scope in terms of categories covered is limited (see for example Belgium and the Netherlands). There are additional programmes directed at ensuring admission to the territory for persons in need of protection, as in Italy (humanitarian corridors) and Ireland (community sponsorship), but the number of individuals covered by these schemes remains modest, especially when compared to the numbers of persons in need of protection and to the increasing denial of access at borders.

Separately, mention should be made of the evacuations carried out by European countries of local employees and their family members after the Taliban takeover of Afghanistan. Based on European Commission data, as of early December 2021, European countries had evacuated around 28,000 Afghans, with some countries continuing evacuations of their local staff and those at a very high risk of persecution. Detailed analysis of evacuation operations and overall EU response to the Afghanistan crisis was included both in the AIDA reports and in dedicated ECRE publications.\(^\text{15}\)

4. Recognition rates: more than meets the eye

According to Eurostat, in 2021, 523,200 first instance decisions on asylum applications were made in EU Member States and a further 197,200 final decisions were issued following an appeal or review. Decisions made at first instance resulted in 202,200 persons being granted


protection status, including national forms of humanitarian protection, while a further 65,100 people received protection status in appeal or review processes. Thus, the protection rate at first instance was 38.6% and at second instance, protection was granted in 33% of cases. These rates are relatively high in historical terms.

It is difficult to calculate the annual overall protection rate because in any given year the decisions at first and second instance represent different caseloads (i.e. the majority of final decisions are taken on cases for which the first instance decision was issued in previous years). Nonetheless, consistent with the situation in the last six years, the protection rates suggest that most people arriving in Europe are found to have protection needs, with nearly 40% being recognised as in need of protection at first instance, and one third of negative decisions overturned on appeal. In addition, there are a number of reasons why the official protection rates are likely to underestimate protection needs.

First, as observed in previous publications, a person’s chance of obtaining protection in the EU varies dramatically depending on the country examining their claim. Given the absence of objective explanations of the divergence, it suggests that in some countries decision-making may be marred by gaps in quality. According to AIDA, the overall protection rate for Afghans in Europe in 2021 was high – partly due to decisions on cases of individuals evacuated after the Taliban takeover when they accessed the asylum procedure and were granted a protection status. Nonetheless, in some countries, such as Bulgaria, asylum applications from Afghan nationals were still rejected in over 90% of cases. For people from Iraq, recognition rates ranged from 84% in Italy to 1% in Poland, with a broad spectrum of recognition rates in between: 38.3% in Belgium, 43.4% in Germany, and 44% in Austria.

Another relevant element is that statistics collected by Eurostat asylum include inadmissibility decisions, which do not always factor in an applicant’s protection needs. As an example, the statistics include inadmissibility decisions issued to people who are already beneficiaries of protection in another Member State. In Belgium, of a total of 11,817 persons refused international protection in 2021, 5,169 were issued an inadmissibility decision on the basis of rules on subsequent applications or as beneficiaries of international protection in another Member State. Other countries such as Austria, Greece and Sweden relied heavily on the application of safe country concepts as a ground for rejection of applications as inadmissible.

In the case of Greece, a significant number of applicants were not provided with access to an in merits examination with their applications examined using the safe third country concept, following the issuance of the Joint Ministerial Decision which designated Türkiye as a safe third country for applicants from Syria, Afghanistan, Somalia, Pakistan, and Bangladesh. Notably, three of the five nationalities mentioned in the JMD are those which had the highest recognition rates in Greece prior to the Decision. At the same time, Türkiye continued to use voluntary return mechanisms for transfer to Syria and Afghanistan. In some cases, the voluntary nature of the return has been questioned, especially as the decisions may have been influenced,

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18 When considering only in merits decisions.
among other factors, by the hostile environment for refugees and the deactivation of registration for people outside satellite cities.

Other factors influencing protection rates derive from national policies and are not easily illustrated by statistics, such as the number of applicants abandoning the procedure in countries that are still considered as a place of transit (e.g. Croatia).

5. Lengthy asylum procedures and significant backlogs

In 2020, asylum authorities were able to focus on reducing the backlog of pending cases at national level due the limited number of international protection applications during the pandemic. This trend was reversed in 2021 in some AIDA countries – specifically Austria, Bulgaria, Cyprus and Germany – which saw sharp increases in pending cases during the year.

The length of first instance procedures remained a problem in most countries, with significant delays at registration stage, as well as longer processing times for applications for international protection. Similarly, the length of second instance procedures remained an issue. For example, in Ireland, individuals whose circumstances fall outside the prioritisation criteria wait outside the prioritisation criteria wait approximately 23 months for a decision on their application, while those who successfully seek prioritisation still wait approximately 14 months, an increase of around five months compared to the previous year.\(^\text{19}\) In Italy, the average time for an appeal to be processed reached three years in 2021, compared to the four months prescribed by law.\(^\text{20}\)

6. Lacking procedural guarantees

As reported in previous years, the procedural guarantees which are provided for by law and are essential to ensuring fairness, are often denied in practice, thus limiting access to asylum and protection from *refoulement*.

State-funded legal assistance at first instance is still lacking in most countries covered by AIDA, while legal aid at second instance is generally insufficient due to a lack of resources and quality gaps. Strong criticism was presented on this question, for example from NGOs in Slovenia towards the new amendments to the asylum law according to which counsellors of asylum seekers and refugees, as well as legal guardians of unaccompanied minors, are no longer protected by lawyer-client privilege.

Various issues were reported regarding information provision and access to NGOs, especially in border areas and detention. In Poland, people seeking international protection clearly had problems with access to NGOs and to UNHCR as not only the border but also the area near the border zone (the surrounding forests and villages) was subject to a state of emergency.

In Malta, access to the living quarters of detention centres was forbidden to NGOs and lawyers, creating serious limitations in the possibility of providing legal services. In addition, over recent


years, many states have adopted restrictive legal frameworks for NGOs, while others have resorted to “criminalisation of solidarity”, a term referring to the integration into criminal law and policing of people who help migrants, including through search and rescue operations, reception activities, and the provision of food, housing and services. In 2021, the existence of open criminal proceedings against people who tried to support migrants was reported in a number countries, specifically Greece, Italy, Malta, and Spain.

7. Inadequate reception capacity and lack of access to reception conditions

Reception capacity was inadequate in most countries covered by AIDA throughout 2021, among which particularly issues arose in Belgium, France, Greece, Ireland, the Netherlands, Spain, Slovenia, and Serbia. As a consequence, access to adequate accommodation was severely limited for both asylum applicants and people in need of protection.

Countries including Greece, Ireland, Italy, and the Netherlands resorted, as in previous years, to the use of emergency accommodation facilities, generally offering sub-standard conditions to the people hosted therein. In Greece, most of the people hosted in temporary camps on the mainland were women and children. In the Netherlands, many people were forced to sleep on the floor outside the first reception centre of Ter Apel, waiting their turn to register their applications. Similarly, in Belgium, from October 2021, dozens of applicants – mainly single men – were unable to access a reception place for a number of days.

In Bulgaria, Cyprus and Poland, asylum applicants mostly lived in private accommodation rather than in reception centres, often in extremely poor conditions. In other cases, the lack of reception places resulted in homelessness and destitution. In Cyprus, France, Italy, Malta, and Spain increasing numbers of people were left with no option except to live in informal camps. In Malta, the situation is due to the policy of eviction of non-vulnerable asylum seekers after six months in reception rather than to an absence reception capacity because only 26% of reception places were occupied in the country at the end of the year.

Poor conditions were registered for reception centres in most AIDA countries, including Austria, Bulgaria, Cyprus, Germany, France, Greece, Italy, the Netherlands, Poland, and Romania. Among the issues reported were overcrowding; poor hygiene and sanitation conditions; lack of adequate community spaces; remoteness of the facilities; lack of safeguards against sexual and gender-based violence; issues with quality and/or quantity of food provided; and suspension of services and activities, and mass quarantine due to COVID. The pandemic also exacerbated the difficulties faced by many asylum seekers in accessing the labour market.

8. Widespread use of detention and limited use of alternatives

The detention of asylum seekers and irregular migrants in European countries has increased substantially in recent years, in many cases due to policy and political decisions resulting from a hardening attitude towards irregular migrants and asylum applicants. Throughout 2021,

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many countries made plans to extend the detention capacity of existing centres or to construct new ones. Among them were Belgium, Germany, Spain, Greece, and Ireland. At the same time, however, conditions in existing detention centres continued to deteriorate, and the use of alternatives to detention remained very limited. Applicants who were part of vulnerable groups, including unaccompanied minors, were reportedly frequently detained in Cyprus, Spain, Greece, and Poland.

The use of de facto detention also continued to be widely reported in 2021. Intensification of border controls in recent years have led to new forms of detention in France, including de facto detention in police stations at the Italian border which cannot be accessed by civil society organisations. In Greece, since November 2021, residents of the newly established “Closed Controlled Access Facility” of Samos who do not have a valid asylum seeker’s card were prohibited from exiting the facility, a measure amounting to de facto detention. In the cases of Italy and Malta, such practices took the form of long quarantine periods. Additionally, Malta continued its policy of automatic detention of asylum seekers upon arrival. Concerns were raised about the “new border” of Pantelleria in Italy, where disembarked people were channelled into hotspot-like procedures.

Access to detention facilities remained partially restricted in various countries, mostly due to COVID-19 measures. This led to serious constraints for detainees in accessing legal assistance. That was the case for countries such as Malta, Poland, Sweden, and Switzerland. In Poland, foreigners were not informed about their right to legal assistance in court proceedings and information on the right to appeal was not translated into a language they could understand, meaning that they were not correctly informed about their rights.

A positive development in Switzerland since 2020 is that, under the new asylum procedure, all asylum applicants are systematically assigned a legal representative. However, in practice, this is still not the case for people lodging asylum applications while in detention or in prison.

The Council of Europe Committee on the Prevention of Torture (CPT) published a new report following a visit to Sweden in January 2021, in which it expressed continued concerns about the lack of access to healthcare and to legal aid for people being detained, as well as about placing of detainees in prison facilities.

9. Access to rights for beneficiaries of international protection

Significant gaps in terms of inclusion opportunities were reported in Bulgaria, Croatia, Cyprus, Greece, Hungary, Poland, Slovenia, and Serbia. For instance, only 83 people received integration support in Bulgaria in the whole of 2021, while no other integration activities took place, marking the eighth consecutive year of the national “zero integration” policy. In Slovenia, the amendments to the national International Protection Act limited the rights of beneficiaries of international protection in the integration process, in particular by introducing measures to reduce the possibility to obtain financial assistance. In many countries, inclusion of refugees, as well as of asylum applicants still largely depended on the assistance of CSOs.

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22 Due to the use of widespread detention, the Dutch Council of State declared ruled that the principle of mutual trust no longer applies to Malta, and as such Dublin transfers from the Netherlands to Malta were suspended (Council of State, ECLI:NL:RVS:2021:2791, 15 December 2021).
Serious limitations continued to be reported in terms of access to education and to the labour market, which were often rendered more difficult due to the effects of the COVID-19 pandemic. In addition, many problems were reported (in, inter alia, Cyprus, Greece, Ireland, the Netherlands, Poland, Portugal, and Spain) in relation to access to housing for beneficiaries of protection, for many reasons: xenophobia and discrimination; lack of adequate resources; general housing shortages in the host country; lack of integration programmes and, as a consequence, limited chances for applicants to start their independent life; and lack of support after recognition of protection status.

As in previous years, national authorities started large numbers of cessation and withdrawal procedures (e.g. in Austria, Bulgaria, Germany, and Hungary), and, in some cases, expanded the grounds for initiation of such procedures (Bulgaria and Hungary).

National Courts have in some cases recognised that it would be unlawful to return beneficiaries of international protection to another member state, due to the risk of their being subjected to ill-treatment and/or due to the humanitarian situation in the country. That was the case in Germany and the Netherlands, where the Federal Constitutional Court and Council of State respectively, ruled that beneficiaries of protection could not be sent back to Greece for as long as certain standards were not respected.

Some positive developments were also registered in 2021. In France, the government introduced a new universal programme, which aims to provide an overall response to support a refugee's integration, covering housing, employment, and benefits. Ireland introduced a scheme to regularise long-term undocumented migrants, also open to international protection applicants who have an outstanding application for international protection and have been in the asylum process for a minimum of 2 years.

**What next?**

The 23 country reports published in the AIDA database managed by ECRE, show that a fair and efficient asylum system, compliant with EU law including on fundamental rights, is still a long way off. Organised safe and legal pathways to reach Europe are limited, while access to territory and to an asylum procedure is frequently denied, with extensive human rights violations documented at the EU’s external and internal borders.

Although some maintain that legislative reform is the only way to achieve an efficient asylum system, more attention must be paid to compliance with the existing rules. The recent update of the AIDA country reports confirms the continued existence of serious implementation gaps in key areas including: barriers to registration; inconsistent decision-making; lack of respect for procedural guarantees; inadequate reception conditions and widespread use of detention; and denial of the socio-economic rights of beneficiaries of international protection. The focus at the European level should be on addressing these issues, for the sake of the current and indeed any future reformed asylum system.
Country reports on the year 2021

- Austria, April 2022
- Belgium, April 2022
- Bulgaria, February 2022
- Cyprus, April 2022
- Germany, April 2022
- Spain, April 2022
- France, April 2022
- Greece, May 2022
- Croatia, April 2022
- Hungary, April 2022
- Ireland, April 2022
- Italy, May 2022
- Malta, May 2022
- Netherlands, April 2022
- Poland, May 2022
- Portugal, May 2022
- Romania, May 2022
- Sweden, May 2022
- Slovenia, May 2022
- United Kingdom, March 2022
- Switzerland, April 2022
- Serbia, May 2022
- Türkiye, July 2022