

Discussion paper

Informal Justice and Home Affairs Ministers' Meeting

Copenhagen

26-27 January 2012

A common framework for genuine and practical solidarity towards Member States facing particular pressures due to mixed migration flows

1. Introduction

In its Conclusions on 24 June 2011, the European Council reaffirmed the need for genuine and practical solidarity towards the Member States most affected by migratory flows. Drawing upon those principles, the Danish Presidency considers it important to discuss whether a more formal structure should establish a common framework for genuine and practical solidarity. A common framework should take into account the key actions highlighted in the Commission's recent Communication for intra-EU solidarity in the field of asylum and should ensure that these key actions can be translated into concrete tools for the EU to utilise to the best extent possible, within the existing legal and political framework set out by the Stockholm Programme. Any such framework should also make maximum use of the possibilities afforded by relevant EU agencies such as Frontex and EASO.

Such a framework could ensure that EU solidarity is quickly put into effective action and applied in a uniform and transparent manner both in the general migration management of each Member State and when unexpected and extraordinary situations are putting migration, asylum and border management systems under severe pressure.

Solidarity is not a new phenomenon to the EU in the field of asylum and migration. It is important to note that many of the solidarity tools outlined in the Commission's Communication are currently in existence and have been put into use by Member States, such as Greece. The EU is not a stranger to using such tools, but a more coordinated

framework presented as an overall package should ensure consistency for those Member States under pressure.

As a precondition for solidarity, many Member States have underlined the need for the EU to lay strong foundations for mutual trust between one another. Mutual trust is created through the commitment of all Member States to adhere to the EU asylum *acquis* and their international legal obligations as these obligations must be implemented not only by law but also in practice. As expressed by the Commission in its Communication on solidarity, the notion of ‘keeping one’s house in order’ should be endorsed as a basis for a common framework for genuine and practical solidarity.

In order for solidarity measures to have as much impact as possible, particularly in emergency situations, Member States requiring assistance must be open to receiving urgent support, both financially, legally and in practical terms. This premise should be with respect to each Member States’ sovereignty and constitutional law.

The existence of emergency funding measures that are quickly accessible during times of an asylum or migration crisis is crucial so that Member States under pressure are able to react swiftly. Solidarity measures by EU agencies and other Member States should also be reinforced by funds that are readily available, such as the solidarity fund for natural disasters. Furthermore, the Commission’s proposals for a new and flexible Asylum and Migration Fund and a Fund on Internal Security will strengthen possibilities for urgent financial assistance. Improved emergency funding possibilities would, in particular, enable Member States under serious pressure to quickly provide adequate reception conditions in line with the ECHR and EU minimum standards for asylum.

It is noted, however, that there are many challenges when it comes to defining disproportionate pressures within the EU. In many respects this is a highly complex and delicate exercise that can yield different results depending on which parameters are taken into consideration, e.g. number of asylum seekers entering the country, size and geography of country, population, GDP, square kilometers and length of external borders. The annex to this document highlights some of the statistics and parameters in more detail.

2. Solidarity and mutual trust as an element of the Common European Asylum System

During the Polish Presidency, considerable progress was made regarding the establishment of an ‘early warning, preparedness and management of crises process’

(“early warning mechanism”) which the majority of Member States as well as the Commission supported as an alternative to a suspension mechanism in the proposed amendment to the Dublin Regulation¹, although this has yet to be finalised. The process has been met with interest from the European Parliament during discussions in the Informal Contact Group and it is hoped that this will go to some lengths in assisting the Council to conclude a Common European Asylum System (CEAS) by 2012.

Such an early warning mechanism will play an important role in the prevention of an asylum crisis developing in a Member State, as well as safeguarding the rights of applicants for asylum. Therefore, a new clause ensuring such a process will be inserted into the Dublin Regulation currently under negotiation.

This process should be anchored as part of a wider course of action which will help preserve a CEAS in general. Therefore, and in order to ensure the operability of such an early warning process, it is necessary to describe in more detail how the different solidarity measures can be channeled into a genuine and practical solidarity agenda as called for by the European Council. The development of a ‘soft law’ instrument (Council Conclusions) in the form of a ‘Common framework for genuine and practical solidarity’ within the EU could serve this purpose.

In the field of asylum, there are many aspects of solidarity that already exist that have allowed Member States to contribute to innovative practical cooperation projects both bilaterally and multilaterally. The establishment of the European Asylum Support Office (EASO) creates important new opportunities for the purpose of giving expression to practical solidarity in the framework of the establishment of the CEAS. Other EU agencies, such as Frontex as well as international organisations, including the UNHCR and IOM, and NGOs are also key actors when it comes to supporting Member States’ asylum systems through capacity building and practical assistance. In addition to this assistance, there have been further developments led by EASO for the European Asylum Curriculum and the Country of Origin Information Portal as well as other cooperative measures aimed to enhance performance in Member States’ asylum systems overall. The future success of these measures will continue to depend on Member States’ active engagement. It is essential to explore how further cooperative working between the EU agencies and international organisations might be achieved. Further coordination of all these measures into a single framework, can make these measures more accessible in the time of a crisis.

As part of all this, the funding measures involved with solidarity are instrumental to enabling practical cooperation measures to be put into action. The European Refugee

¹ Council documents 16194/11 and 18170/11

Fund has been an option for Member States under particular migratory pressure as well as other types of funding. The Commission's proposal to set up a new Asylum and Migration Fund, with an overall increased budget of approximately €3.9 billion will hopefully allow for more flexibility and reduced administrative burdens for actions focusing on migration flows and the integrated management of migration whilst still supporting actions in relation to asylum, legal migration, the integration of third-country nationals and return operations. The commitment to a strategic use of EU funding by Member States should be part of the common framework.

In other significant areas of solidarity, the development of a mandatory EU relocation scheme for beneficiaries of international protection has been met with opposition by a clear majority of Member States. Conversely, a discussion on the feasibility of a voluntary permanent relocation scheme is seen as important for some Member States, but likewise this has not yet had the support of a majority of Member States. As a consequence, only the voluntary relocation scheme for Malta has been generally supported. It could be considered whether a permanent scheme could be envisaged in the case of other comparable Member States, if subjected to disproportionate pressures as in the case of Malta. The evaluation of the EU Relocation Malta Project (EUREMA) could form a basis for this.

In conjunction with relocation, joint processing of asylum applications has been considered on several occasions. The Commission will initiate a study on the feasibility of joint processing of asylum claims in 2012 and this will give Member States better insight as to how – if at all – this process can become an effective solidarity tool. The outcome of this study should initiate discussion on this issue.

In other ways, a common framework on solidarity could consider the possibilities of making better use of modern technology, e.g. video-conferencing when interviewing asylum seekers as opposed to or as a supplement to the deployment of EASO asylum support teams.

3. Solidarity and Mutual trust as a tool for better Schengen Governance and Migration Management

Geographical location obviously matters when it comes to the challenges in controlling the EU external border. In 2011, we have witnessed pressure both at the Central Mediterranean border and the South-Eastern borders of the EU. Nevertheless, the fact that Sweden in 2010 rated as the third highest recipient of asylum seekers in the EU (after Germany and France) seems to indicate that other factors besides geography play

an important role, when an asylum seeker lodges an application for international protection in a Member State. Recently, Luxembourg has also demonstrated this issue.

That it not to say that the pressure at the external borders from mixed migration flows does not put a burden on the Member States in question. It is certainly a burden that warrants solidarity. A Member State living up to its responsibility to control its part of the external border does so in the common interest of all Member States. Therefore, genuine and effective solidarity is needed to better manage the external borders of the EU thereby preventing possible pressures at the external borders from putting the overall functioning of the Schengen cooperation and the free movement of persons at risk.

Solidarity consists of many elements we already know where Schengen governance is concerned. Measures such as making the best possible use of the enhanced possibilities for assistance by Frontex (personnel, equipment, analytical support and capacity building assistance) as a result of the recently amended Frontex Regulation; looking at possible new flexible funding possibilities under existing EU funding programmes as well as in the context of the proposed Internal Security Fund and Asylum and Migration Fund, e.g. for emergencies; cooperating bilaterally with other Member States, key countries of origin, first asylum and transit as well as with international organisations such as the UNHCR and IOM. The proposals adopted by the Commission in September 2011 on a better functioning of the Schengen area aim in particular to identify possible weaknesses at an early stage and to provide for measures to remedy those weaknesses in order to maintain mutual trust. The recent proposal to establish a European Border Surveillance System (EUROSUR) and the increasing use of modern technology in visa processing and border management to which Member States can receive funding are other examples of EU cooperation and measures under way to strengthen the Schengen system in a spirit of solidarity.

4. External relations in the context of solidarity

In conjunction with intra-EU solidarity measures, specific focus should be on continuing and strengthening cooperation with candidate countries, countries of origin and transit countries. A number of solidarity measures vis-à-vis third countries already exist and could be further strengthened such as: Twinning projects in transit and third countries, Regional Protection Programmes, initiatives coordinated and/or implemented by EU agencies, Mobility Partnerships, resettlement etc. Working upstream in countries of origin and transit could help stem the flow of illegal migration and secondary movement to the EU in general and in particular Member States under mixed migration pressure, whilst at the same time contributing to better protect the fundamental rights of

irregular migrants and those in need of international protection as well as the local populations affected by forced migration.

In its communication from 18 November 2011 on a Global Approach to Migration and Mobility, the Commission has come up with a ‘more for more’ approach implying an element of conditionality that should continue to be applied as a way to increase transparency and speed up progress towards concluding and implementing readmission agreements. In this context, the Commission suggests that an appropriately sized support package geared to capacity-building, exchanges of information and cooperation in all areas of shared interest should be offered by the EU and by Member States on a voluntary basis.

* * *

Ministers are invited to respond to the following questions in light of the discussion on solidarity.

- 1. Would delegations find it useful to develop a common framework for genuine and practical solidarity (Council Conclusions) with a view to ensuring the operability of the “early warning, preparedness and management of crises process” foreseen in the Dublin Regulation?**
- 2. How should solidarity measures be triggered? Should it be based on statistical/objective evidence that indicates a Member State is under pressure or is the process foreseen for the early warning and preparedness mechanism adequate to initiate solidarity measures in a timely and sufficiently effective manner?**
- 3. Should agencies such as EASO and Frontex have a strengthened role in supporting the implementation of the solidarity measures?**
- 4. Should further measures be put in place for intra-EU relocation of beneficiaries of international protection along the lines of the voluntary scheme put in place for Malta? Or should intra-EU relocation remain a voluntary solidarity measure for a few small EU Member States under serious pressure?**
- 5. Should a common framework for genuine and practical solidarity also include support for migration management more generally with the aim of strengthening the Schengen system and cooperation with third countries?**

ANNEX

Key documents

- The 2008 European Pact on Immigration and Asylum introduces the notion of effective solidarity in the field of asylum. (Council Document 13440/08)
- The 2009 Stockholm Programme refers to the promotion of ‘effective solidarity with the Member States facing particular pressures’ (OJ C 115 of 4.5.2010).
- European Council Conclusions from 24 June 2011 calls for ‘genuine and practical solidarity towards Member States most affected by migratory flows’. (EUCO 23/11)
- Commission Communication of 18 December 2011 on a Global Approach in Migration and Mobility calls for a “more for more” approach in the cooperation with third countries. (COM(2011) 743 final)
- Commission Communication on solidarity of 2 December 2011 calls for ‘enhanced intra-EU solidarity in the field of asylum’. (COM (2011) 835 final)
- SCIFA paper from Presidency on 31 October 2011 outlining ‘a process for early warning, preparedness and management of asylum crises’. (Council Document 16194/11)

Statistics

Key figures

Number of asylum seekers in the EU in 2010	257. 815
Number of persons granted international protection in first instance in 2010	55.095
Apprehensions of illegal immigrants in 2010	About 505,000 (11 % less than in 2009, 18 % less than in 2008)
Third country nationals returned in 2010	Almost 200,000, almost 22 % less than in 2009
2012 Budget for the External Borders Fund, the Integration Fund, the European Refugee Fund and the Return Fund as approved by the budgetary authority²	€ 777 million
Maximum 2013 Budget outlay for the External Borders Fund, the Integration Fund, the European Refugee Fund and the Return Fund³	€1.824 billion
Total for the Asylum and Migration Fund and Internal Security Fund for 2014-2020⁴	€8.517 billion
EASO Budget 2012	€10 million
Frontex Budget 2012	€84.960 million

² The amount includes both national programmes and funding directly managed ("Community actions")

³ Subject to a decision by the Budgetary Authority

⁴ Commission proposals COM (2011) 749-753 final currently under negotiation; the Internal Security Fund also includes €1.128 million on police cooperation, combating and preventing crime and crisis management

Allocations to the Member States for 2012 under the General Programme
Solidarity and Management of Migration Flows⁵

Country	Refugee Fund III	External Borders Fund	Return Fund	Integration fund
Austria	4.062.667 €	2.407.777 €	3.170.380 €	2.495.664 €
Belgium	4.840.970 €	4.151.704 €	5.238.425 €	3.191.782 €
Bulgaria	724.625 €	10.861.347 €	768.931 €	1.091.723 €
Cyprus	1.378.748 €	7.099.121 €	2.242.700 €	1.274.639 €
Czech Republic	737.959 €	2.741.306 €	1.189.726 €	3.480.767 €
Denmark		1.542.210 €		
Estonia	508.092 €	4.860.920 €	546.222 €	1.406.439 €
Finland	2.892.292 €	9.780.747 €	902.925 €	1.422.092 €
France	12.444.712 €	24.060.716 €	15.746.260 €	12.161.817 €
Germany	9.763.284 €	14.384.407 €	5.287.660 €	18.197.250 €
Greece	3.601.857 €	44.745.804 €	37.357.612 €	4.106.402 €
Hungary	1.197.858 €	10.630.422 €	1.325.068 €	2.084.150 €
Iceland		100.500 €		
Ireland	1.234.672 €		740.222 €	1.682.687 €
Italy	6.234.384 €	52.787.940 €	9.066.985 €	33.974.037 €
Latvia	515.011 €	3.197.746 €	601.522 €	1.914.149 €
Lithuania	568.832 €	5.975.997 €	916.796 €	1.028.222 €
Luxembourg	439.678 €	131.206 €	358.506 €	708.755 €
Malta	1.185.203 €	14.931.533 €	824.717 €	683.571 €
The Netherlands	5.389.025 €	7.403.041 €	7.053.178 €	3.495.980 €
Norway		2.838.543 €		
Poland	2.398.839 €	13.132.873 €	3.980.509 €	3.113.321 €
Portugal	473.986 €	3.978.321 €	1.772.610 €	3.528.371 €
Romania	743.779 €	16.697.659 €	2.295.060 €	1.446.040 €
Slovakia	649.043 €	1.418.484 €	961.521 €	878.531 €
Slovenia	548.068 €	7.651.980 €	1.118.892 €	1.483.432 €
Spain	1.516.816 €	48.154.233 €	18.786.416 €	22.304.119 €
Sweden	15.924.440 €	1.945.364 €	5.080.126 €	3.537.958 €
United Kingdom	12.267.002 €		23.792.028 €	22.415.273 €
Switzerland		4.299.020 €		
TOTAL	92.241.842 €	321.910.920 €	151.125.000 €	153.107.174 €

⁵ As transmitted by the Commission to the Member States

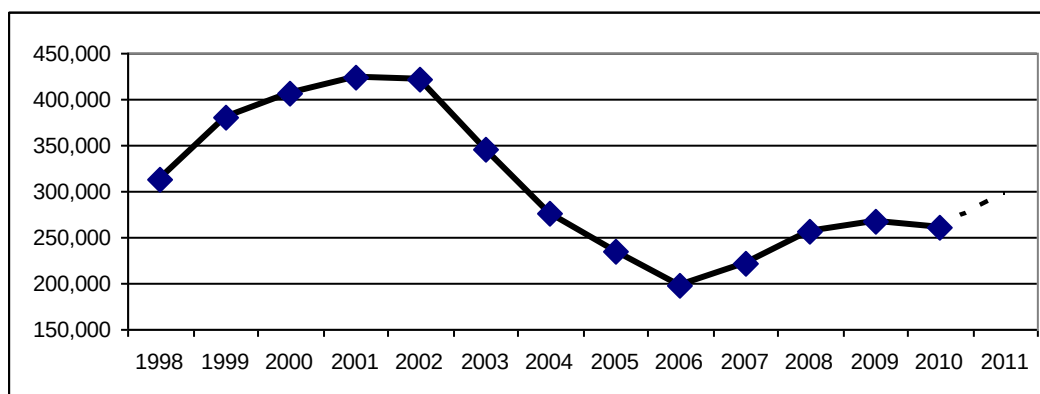
**Extrapolations on the allocations to the Member States under the General
Programme Solidarity and Management of Migration Flows for 2013⁶**

Country	Refugee Fund III	External Borders Fund	Return Fund	Integration fund
Austria	7.469.000 €	3.863.000 €	5.955.000 €	3.709.000 €
Belgium	4.461.000 €	5.363.000 €	10.590.000 €	3.118.000 €
Bulgaria	766.000 €	17.908.000 €	1.175.000 €	552.000 €
Cyprus	2.141.000 €	5.818.000 €	2.128.000 €	1.404.000 €
Czech Republic	1.763.000 €	5.636.000 €	2.969.000 €	3.578.000 €
Denmark		1.727.000 €		
Estonia	503.000 €	8.045.000 €	538.000 €	1.548.000 €
Finland	1.788.000 €	13.727.000 €	1.647.000 €	1.441.000 €
France	13.817.000 €	27.408.000 €	19.024.000 €	15.430.000 €
Germany	12.876.000 €	22.408.000 €	14.776.000 €	30.539.000 €
Greece	2.067.000 €	37.226.000 €	19.230.000 €	4.275.000 €
Hungary	1.036.000 €	16.772.000 €	3.065.000 €	2.740.000 €
Iceland		91.000 €		
Ireland	1.778.000 €		1.487.000 €	1.519.000 €
Italy	4.127.000 €	56.589.000 €	21.050.000 €	20.854.000 €
Latvia	503.000 €	4.363.000 €	594.000 €	2.296.000 €
Lithuania	722.000 €	8.454.000 €	750.000 €	1.022.000 €
Luxembourg	707.000 €	136.000 €	369.000 €	588.000 €
Malta	888.000 €	32.499.000 €	1.027.000 €	557.000 €
The Netherlands	4.879.000 €	9.863.000 €	9.256.000 €	4.096.000 €
Norway		2.773.000 €		
Poland	2.436.000 €	21.045.000 €	4.987.000 €	3.311.000 €
Portugal	423.000 €	9.545.000 €	2.542.000 €	3.229.000 €
Romania	710.000 €	22.863.000 €	1.509.000 €	1.305.000 €
Slovakia	2.071.000 €	2.682.000 €	1.650.000 €	770.000 €
Slovenia	762.000 €	12.090.000 €	2.169.000 €	981.000 €
Spain	1.615.000 €	98.316.000 €	16.918.000 €	28.278.000 €
Sweden	12.840.000 €	4.045.000 €	5.962.000 €	2.800.000 €
United Kingdom	13.402.000 €		27.658.000 €	29.785.000 €
Switzerland		3.273.000 €		
TOTAL	96.550.000 €	454.528.000 €	179.025.000 €	169.725.000 €

⁶ Based on extrapolations done in 2007 on the calculations for the 2007 and 2008 allocations. Due to the evolution of data and, in the case of the External Borders Fund, these figures must be viewed with the caveat that the allocations may be different when finally published. In accordance with the basic acts, the calculation of the allocations will be transmitted to the Member States by July 2012.

Asylum statistics taken from Commission Communication on Solidarity

Between 1998 (the earliest date for available EU-level data) and 2010, the total number of asylum applications in the 27 EU Member States changed as follows. In the first half of 2011, the number of asylum applications increased by 14 % compared to the first half of 2010 (note that data from Greece and Luxembourg is not yet fully available).



Source: Eurostat.

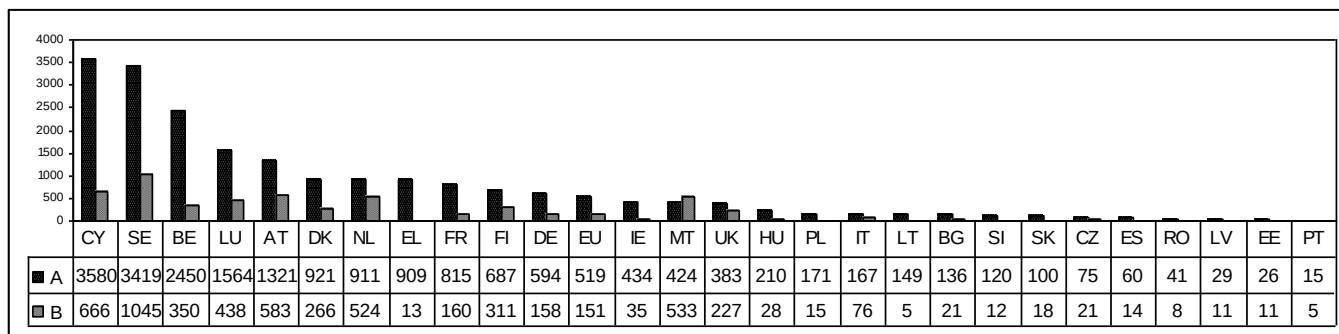
Asylum applications in the first half of 2011 compared to the first half of 2010

	H1 2010	Full year 2010	H1 2011*	Change H1 2010-2011*	2011M01	2011M02	2011M03	2011M04	2011M05	2011M06
BE	11 445	26 550	14 790	+29 %	2 335	2 365	2 825	2 525	2 420	2 320
BG	500	1 030	465	-7 %	115	90	70	65	60	65
CZ	465	785	370	-20 %	65	55	70	60	75	45
DK	2 310	5 105	1 830	-21 %	365	290	325	290	290	270
DE	18 455	48 595	22 890	+24 %	4 245	3 735	4 075	3 365	3 875	3 595
EE	20	35	35	+75 %	5	5	5	5	10	5
IE	1 025	1 940	685	-33 %	135	125	125	85	100	115
EL	4 705	10 275	3 800*	+3 %*	605	920	1 005	455	815	:
ES	1 210	2 745	1 950	+61 %	240	335	365	430	365	215
FR	25 925	52 725	28 835	+11 %	4 400	4 640	5 295	5 125	5 010	4 365
IT	5 370	10 060	10 865	+102 %	590	1 625	1 775	1 460	3 305	2 110
CY	1 235	2 870	895	-28 %	185	145	125	125	165	150
LV	25	60	110	+340 %	5	20	5	15	40	25
LT	195	505	185	-5 %	35	35	35	20	30	30
LU	295	780	770*	+208 %*	115	145	230	145	135	:
HU	1 405	2 095	775	-45 %	115	90	135	165	110	160
MT	60	170	1 650	+2 650 %	10	15	30	1 130	365	100
NL	7 280	15 110	7 105	-2 %	1 255	1 090	1 155	1 095	1 295	1 215
AT	5 065	11 060	5 830	+15 %	885	910	970	980	1 000	1 085
PL	2 920	6 535	2 865	-2 %	365	450	520	430	550	550
PT	80	160	95	+19 %	10	20	15	15	20	15
RO	475	880	560	+18 %	50	85	125	95	95	110
SI	90	250	205	+128 %	35	35	30	15	35	55
SK	295	540	205	-31 %	35	45	30	20	35	40
FI	2 025	3 665	1 315	-35 %	240	210	240	195	210	220
SE	14 110	31 940	12 620	-11 %	1 970	1 965	2 310	2 040	2 375	1 960
UK	11 875	23 740	12 690	+7 %	2 140	1 995	2 230	2 020	2 070	2 235

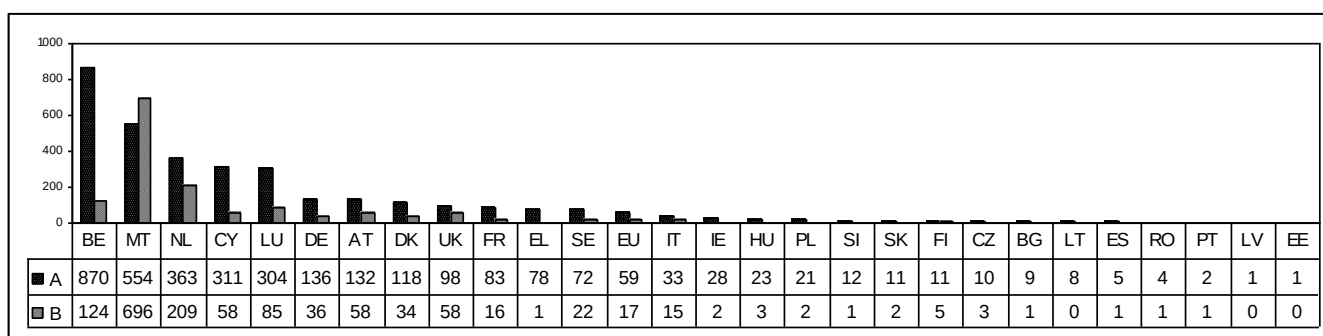
* Except EL and LU. For these two Member States, the absolute values for the first half of 2011 and the comparison are calculated for first five months. Data extracted on 3 October 2011, source: Eurostat.

Asylum applications (A) and new beneficiaries of protection (B) for the full year 2010

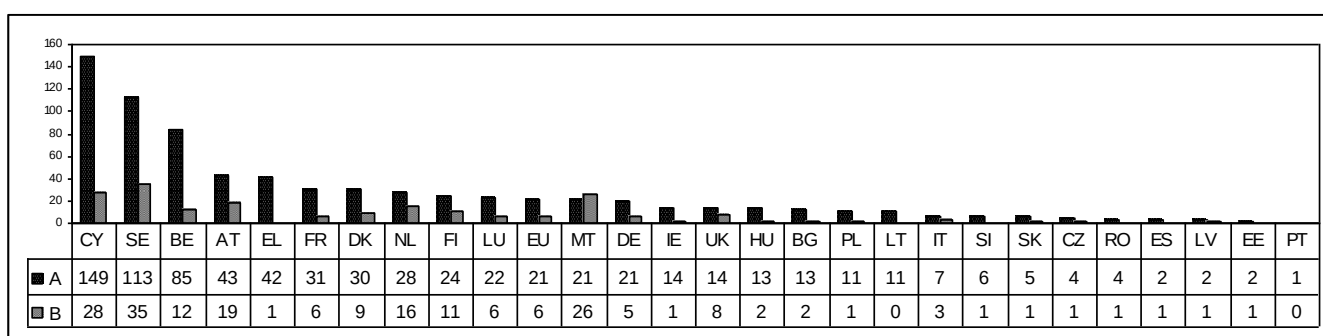
Full year 2010: Applications and new beneficiaries per 1 000 000 population



Full year 2010: Applications and new beneficiaries per 1 000 km² of surface



Full year 2010: Applications and new beneficiaries per 1 000 units of GDP



Population: as of 1 January 2010. Surface: latest data available (2010 or earlier for some Member States).

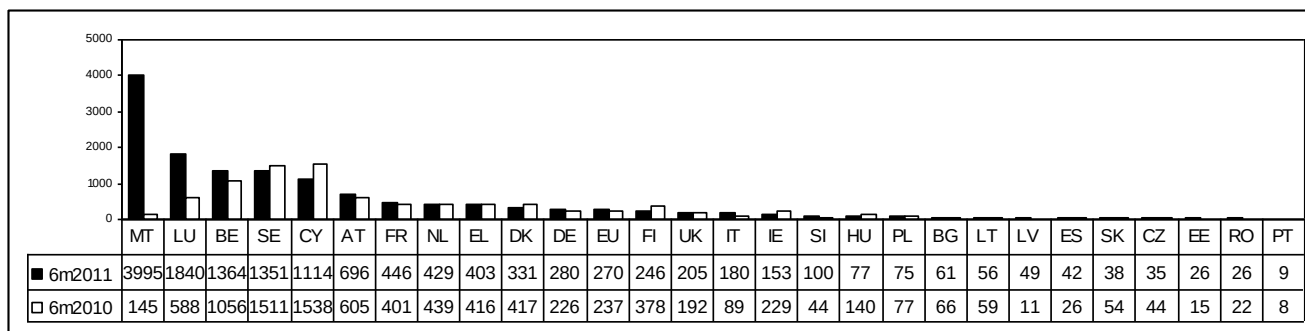
GDP: Purchasing Power Standard (an artificial unit of currency which eliminates the effect of price level differences across Member States⁷) for the full year 2010. Data extracted on 3 October 2011, source: Eurostat.

⁷

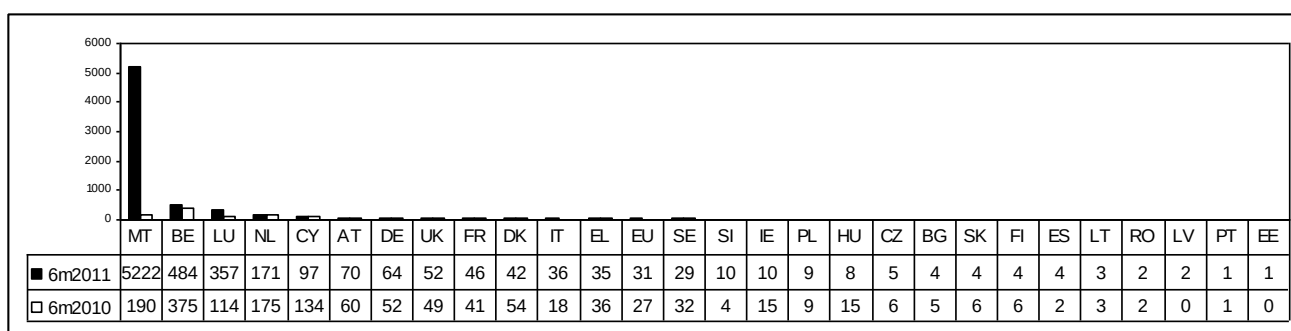
See

http://epp.eurostat.ec.europa.eu/portal/page/portal/purchasing_power_parities/introduction.

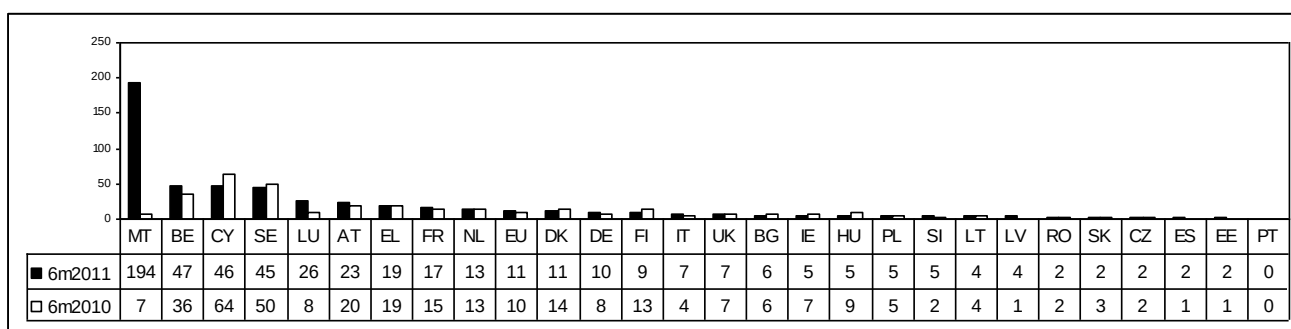
Comparison of first half 2011/2010: applications per 1 000 000 population



Comparison of first half 2011/2010: applications per 1 000 km² of surface

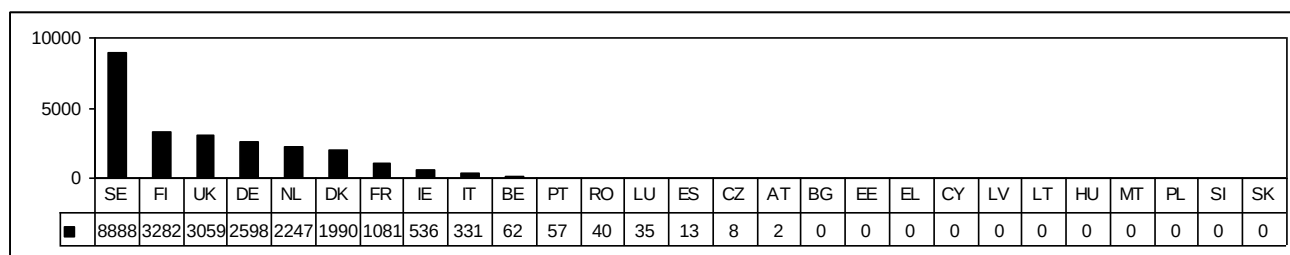


Comparison of first half 2011/2010: applications per 1 000 units of GDP



Population: as of 1 January 2010. Surface: latest data available (2010 or earlier for some Member States).
 GDP: Purchasing Power Standard for the full year 2010. Data for EL and LU was not available for June 2011 and was extrapolated based on the available 5 months. Data extracted on 3 October 2011, source: Eurostat.

Refugees resettled by Member States from third countries between 2006 and 2010



Source: UNHCR for 2006–2007, Eurostat (extracted 8 December 2009) for 2008 except UK: UNHCR, Eurostat (extracted 1 August 2011) for 2009 and 2010.