

# Initial-reception facilities at external borders: fundamental rights issues to consider

*This note outlines how to help ensure a dignified stay for third-country nationals who are apprehended or intercepted at external borders. Specifically, FRA identifies twelve points for protection-sensitive and fundamental rights-compliant planning and design of initial-reception facilities at such borders. These are based on the agency’s work at external borders, including data collection and research activities.*

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## Contents

Relevant guidance and directives .....	2
Two main approaches observed by FRA.....	2
Reception capacity .....	2
Twelve points for guidance.....	2
Selected European legal sources relevant for dignified reception conditions.....	6

## Relevant guidance and directives

For asylum applicants, the [EASO guidance on reception conditions](#) outlines how to apply the reception standards laid down in Directive 2013/33/EU for such individuals. The treatment of people in return procedures must comply with the Return Directive (2008/115/EC). The [CPT standards](#) guide the planning and design of immigration detention facilities.

## Two main approaches observed by FRA

During FRA's visits to Greece, Hungary, Italy and Spain, the agency observed two different approaches to hosting new arrivals at external borders. These observations do not include police facilities that host apprehended or intercepted third-country nationals for just a few hours.

The first approach consists of hosting arrivals in initial-reception facilities, where they stay for the short time needed to carry out their first registration and identification. The arrivals are moved from such facilities to other reception facilities within a matter of days.

The second approach consists of hosting new arrivals in reception facilities at borders, including during the asylum and/or return procedure or parts thereof. In this case, their stay can last for many months.

In its 2019 update of the [FRA Opinion on fundamental rights in the hotspots](#), FRA recalled that the prolonged stay of asylum applicants at relatively remote border locations led to almost insurmountable fundamental rights challenges. These included undignified reception conditions that caused suffering among the asylum applicants and frictions with the local population. In general, the longer the stay in such centres, the more difficult it becomes to uphold dignified reception conditions set out in EU law.

## Reception capacity

FRA's observations also underscored that the available reception capacity largely determines reception conditions. Whether facilities are large or small, overcrowding is a key hurdle to dignified stays.

## Twelve points for guidance

### 1. Define applicable reception standards and responsibilities in national legislation

A clear legal definition of responsibilities and applicable material reception standards – which must ensure dignified conditions as set out in EU and international law – is vital. So are protocols for identifying vulnerable groups. Together, these promote a clear division of responsibilities among all actors, avoiding gaps. They also help to ensure consistency for oversight of reception conditions by responsible national bodies.

## **2. Consider protection risks when selecting the location**

The location selected for the construction of a facility can affect the protection risks faced by people hosted there. Based on FRA's past observations from the Greek and Italian hotspots, when selecting the site for a new facility, the following factors deserve particular attention:

- accessibility of services and life necessities available outside the facility;
- availability of necessary infrastructure e.g. sufficient water supply, sewage connections, electricity and reliable internet connection;
- adequate terrain to allow people with reduced mobility to reach all services;
- absence of environmental or health hazards.

Involving a multi-disciplinary team that includes refugee protection, environment and health expertise in site selection can help reduce risks.

## **3. Avoid prison-like environment**

A facility intended for the first identification and registration of new arrivals should not resemble a prison, with barbed wire and prison-like fencing. This helps avoid the risk of re-traumatising people who have experienced violence and persecution. Staff should not wear uniforms, where possible.

## **4. Facilitate the right to asylum**

To comply with the right to asylum enshrined in Article 18 of the Charter, people must have an effective opportunity to seek international protection. The speedy registration and prompt examination of an asylum claim is an important safeguard against protracted stay in a situation of uncertainty.

Adequate information on the right to apply for international protection and the procedure to follow is a prerequisite under EU law for accessing the right to asylum. Cooperating with organisations specialised in refugee protection and making available legal support can make more effective the information provided.

## **5. Respect the right to liberty**

Under Article 52 (1) of the Charter, any restriction to the right to liberty and security (Article 6 of the Charter) must be provided for by law, pursue a legitimate objective, and be necessary and proportionate. Initial-reception facilities and services offered should allow asylum applicants to move freely within them and to be able to engage in meaningful recreational activities.

Unless deprivation of liberty is justified in an individual case under the Reception Conditions Directive 2013/33/EU, asylum applicants should be allowed to leave the facility and return to it, when possible facilitated through public transport. To monitor whether vulnerable people hosted in the facilities, in particular children, have gone missing, there should be effective entry and exit controls.

Persons in return procedures should not be automatically detained or their liberty restricted beyond what is necessary or proportionate, in full respect of the individual assessment and other requirements of the Return Directive 2008/115/EC.

## **6. Involve and empower refugees and migrants**

Notwithstanding the authorities' duty to ensure dignified reception conditions, assistance and support provided in the facility should utilise the capacities and skills of those hosted there. Where people stay more than just a few days, they should be enabled, as much as possible, to take care of their daily needs – for example, by allowing them to cook. Regular community outreach with men, women, boys, and girls of different background living in the facility help identify what people need and how they can contribute to addressing concerns.

## **7. Enable civil society to help migrants and refugees**

Civil society actors play an important role in mitigating the hardships affecting those staying in reception facilities. They provide humanitarian assistance and can facilitate contact with the host society. Procedures and the layout of the facility should enable civil society actors who offer humanitarian and protection services to work there.

## **8. Provide information to mitigate tensions**

Providing clear information to those held in facilities at external borders – on their rights and obligations, the house rules and applicable procedures – is an important safeguard. It is a core aspect of the right to good administration, which the Court of Justice of the EU considers to be a general principle of EU law, and of the right to effective remedy under Article 47 of the Charter.

Particularly where both the procedures and the applicable situation are constantly evolving, gaps in the timely provision of adequate information can frustrate those hosted in a facility. Providing information is most effective when done after a newly arrived person has had a possibility to rest, and by actors whom third-country nationals trust and consider neutral.

## **9. Allocate sufficient space and resources to identify vulnerabilities**

Under the Reception Conditions Directive 2013/33/EU, Member States are obliged to assess whether an applicant for international protection has special protection needs. The directive presents a non-exhaustive list of people who belong to vulnerable groups requiring special safeguards and care.

Identifying vulnerabilities is crucial to safeguard people's rights during their entire stay in a facility and for organising transfers to appropriate facilities. Standardising, to some degree, procedures to identify whether a person has vulnerabilities promotes consistency.

First-reception and identification procedures should be set up in a way that allows medical, legal, social and psychosocial staff to work in tandem with the authorities registering new arrivals. Having sufficient space for confidential interviews and involving female staff and

interpreters in registration improves the registration process and the identification of certain vulnerabilities, such as those affecting victims of gender-based violence.

## **10. Reduce the risk of sexual and gender-based violence and trafficking in human beings**

Certain individuals hosted in reception facilities, such as single women and LGBTI persons, are at heightened risk of sexual and gender-based violence (SGBV). They should be housed in separate areas with safe access to sanitary facilities. Protection risks should be assessed before placing single persons together. Bedrooms in all accommodation facilities should be lockable and have sanitary and washing facilities inside.

In case of SGBV incidents, there must be clear procedures to immediately separate the victim from the perpetrator(s) and organise their swift transfer to a safe location outside the facility. The availability of same-sex staff, including interpreters, to receive reports of harassment or sexual violence in the camps and facilitate potential referrals is essential.

In line with the Anti-Trafficking Directive 2011/36/EU, staff in reception centres at external borders likely to come into contact with victims of trafficking in human beings should be adequately trained to identify and support such victims.

## **11. Pay attention to child-protection issues**

Children should never be exposed to a prison-like environment with barbed wire fencing, and should not be detained for immigration-related purposes. All actors should cooperate to reduce the risks faced by children in reception facilities at external borders.

Separately accommodating families and creating safe areas for children, need to be accompanied by adequate additional arrangements. Qualified staff specialised in child-protection matters always need to be present. EU law places specific requirements on the material conditions for children, their education and healthcare, and requires that children have the protection and care as is necessary for their well-being.

Unaccompanied children should be assigned guardians and placed outside facilities, in adequate housing with the necessary social and psychological support services.

Clear rules should be in place for the systematic vetting and screening of all personnel in the reception facilities who come into direct contact with children.

## **12. Ensure safety for all people in the facility**

National authorities are responsible for the safety of those hosted in facilities at or near external borders. Large reception centres bring more protection risks for people hosted there and should be avoided.

The safety of everyone in the reception facilities should be ensured by using community policing methods. This entails having the police interact regularly with those hosted in the facilities to make them aware of emerging risks. For this purpose, police should have easy access to interpreters and cultural mediators.

Female police officers should be present in all patrols at day and night, and patrols should visit all areas of the facilities. Each area should also have visibly displayed emergency call numbers, including for domestic violence cases.

## Selected European legal sources relevant for dignified reception conditions

- *Charter of Fundamental Rights of the EU*, Articles 1, 3-5, 6, 24, 41, 47
- *Schengen Borders Code*, recitals 7 and 36, Articles 4, 7, 16 (1) and Annex VII, point 6 (special rules on children)
- *European Border and Coast Guard Regulation*, Articles 3, 40, 43, 80
- *Reception Conditions Directive*, Articles 2 (g), 5, 7-14, 17-19, 21-25, 29
- *Asylum Procedures Directive*, Articles 6 (1), 25
- *Return Directive*, Articles 5, 15-17
- *Anti-Trafficking Directive*, recital 3 & 25, Arts. 11 and 18 (3)
- *Victims' Rights Directive*, Articles 1, 8, 9
- *Directive on combating the sexual abuse and sexual exploitation of children*, Articles 18-19, 23
- **Court of Justice of the EU case law:** C-179/11, CJEU, C-79/13, *Saciri and others*, 27 February 2014; *CIMADE, Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27 September 2012; *Joined Cases C-411/10 and C-493/10, N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform [GC]*, 21 December 2011
- *1951 Geneva Convention on the Status of Refugees*
- *European Convention on Human Rights*, Articles 3, 4, 5 (1) (f) and 5 (2), 8
- *Council of Europe Istanbul Convention*, Chapters IV and VII
- **European Court of Human Rights (ECtHR) case law:** *ECtHR case law on deprivation of liberty of migrants*; *ECtHR case law on accompanied and unaccompanied migrant children in detention*; *ECtHR case law on the protection of non-national victims of trafficking*
- *CPT Standards on Immigration Detention*
- *ECSR: Defence for Children International v. the Netherlands*, Complaint No. 47/2008, merits, 20 October 2009; *Conference of European Churches (CEC) v. the Netherlands*, Complaint No. 90/2013, merits, 1 July 2014; *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, merits, 8 September 2004