

# Common European Asylum System: achievements during the legislative term 2014-2019

The right to asylum is a fundamental right and recognising the refugee status where the criteria are fulfilled is an international obligation, first recognised in the [1951 Geneva Convention on the protection of refugees](#) and the Protocol of 31 January 1967 relating to the status of refugees. In the EU, an area of open borders and freedom of movement, Member States need to have a joint approach to guarantee high standards to persons in need of international protection through establishment of a Common European Asylum System based on fundamental rights.

The European Parliament always strongly promoted a Common European Asylum System in accordance with the Union's legal commitments. The Parliament worked as well as for the reduction of illegal migration as well as for the protection of vulnerable groups. In 2015, the unprecedented high number of arrivals of refugees and irregular migrants in the EU exposed a series of deficiencies and gaps in Union policies on asylum. Therefore, the European Commission proposed in May and July 2016 a third package of legislation to reform of the Common European Asylum System. and the European Parliament took an active part as a co-legislator to achieve this objective.

## Development of the Common European Asylum System

The path towards a fair and harmonised Common European Asylum System (CEAS) includes different stages of development. In 1990, the first so called Dublin Convention was concluded to complement the Schengen area without borders with a mechanism to determine the Member State responsible for an asylum application<sup>1</sup>. Under the Amsterdam Treaty, the first Council Regulation on Eurodac was adopted<sup>2</sup>.

Under the 1992 Treaty of Maastricht, international cooperation on asylum became part of the EU institutional framework, with asylum falling under the third pillar, within the policy area of Justice and Home Affairs. The 1997 Treaty of Amsterdam then expanded the competences of the EU in the area of asylum, enabling the EU to adopt 'appropriate measures' in this area. The European Council at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing the CEAS, to be implemented in two phases.

Against the backdrop of the increasing migration crisis the Commission issued the [European Agenda on Migration](#) in May 2015 which sets out further steps towards a reform of the CEAS. In May and July 2016, the Commission<sup>3</sup> presented proposals for two reform packages of the CEAS to ensure

<sup>1</sup> [Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities.](#)

<sup>2</sup> [Council Regulation \(EC\) N°2725/2000 of 11 Dec 2000 for the establishment of 'EURODAC' came into force on 15 December 2000.](#)

<sup>3</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en)



a humane and efficient asylum policy, which were, however, not accompanied by impact assessments which hampered further evidence based policy making. The Commission highlighted the need for a reform given the significant structural weaknesses and shortcomings in the design and implementation of European asylum and migration policy, which the crisis had exposed.<sup>4</sup> The set of legislative initiatives was intended to improve the CEAS, inter alia, by proposing directly applicable regulations instead of directives (except for reception conditions, which would remain a directive and still needs to be transposed in national law).

In its landmark [resolution of 12 April 2016](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament presented its main positions and concerns in the field of the CEAS development. Parliament has been calling for reliable and fair procedures, implemented effectively and founded on the principle of non-refoulement. It has stressed the need to prevent any reduction in levels of protection or in the quality of reception and to ensure fairer sharing of the burden borne by the Member States at the EU's external borders. In Parliament's view, further steps are necessary to ensure that the Common European Asylum System becomes truly uniform: a comprehensive assessment of its implementation is needed. As regards the Dublin III Regulation, one option for a fundamental overhaul of the Dublin system would be to establish a central collection of applications at Union level — viewing each asylum seeker as someone seeking asylum in the Union as a whole — and to establish a central system for the allocation of responsibility, which could provide for thresholds per Member State to help deter secondary movements. Parliament has emphasised that detention should be possible only in very clearly defined exceptional circumstances and that there should be a right of appeal against it before a court. It supported the reinforcement of the European Asylum Support Office. Parliament took the view that cooperation with third countries must focus on tackling the root causes of irregular flows to Europe.

## **Main legislative instruments on asylum**

### **1. EU treaties**

Article 67 (2) of the Treaty on the Functioning of the European Union (TFEU) states that the European Union shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third country nationals.

Article 78 (1) of the TFEU and Article 18 of the EU Charter of Fundamental Rights stipulates that the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention and other relevant treaties. Article 78 (2) of the TFEU stipulates that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a Common European Asylum System. The provision further details the measures to be adopted.

Article 80 of the TFEU explicitly provides for the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. This principle is governing the asylum policies of the Union and their implementation. EU asylum actions should, if necessary, contain appropriate measures to give effect to this principle. The Treaty also significantly altered the decision-making procedure on asylum matters, by introducing co-decision as the standard procedure.

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<sup>4</sup> European Commission: Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, 6 April 2016.

Neither the TFEU nor the Charter provides a definition of the terms 'asylum' or 'refugee', but both refer explicitly to the Geneva Convention and its Protocol.

## 2. International Conventions

[The Geneva Convention](#) of 28 July 1951 modified by the Protocol of 31 January 1967 relating to the status of refugees provides an international legal framework, currently applying to 148 states parties, who are bound to cooperate with the UN Refugee Agency (UNHCR). The Geneva Convention defines the term 'refugee' and outlines the rights of the displaced, as well as the legal obligations of States to protect them. According to Article 1 of the Geneva Convention, a refugee is defined as a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.'

The core principle is non-refoulement, which asserts that a refugees should not be returned to a country where they face serious threats to their life or freedom. This is now considered a rule of customary international law. The Geneva Convention does not guarantee asylum-seekers the right to be granted refugee status, even if they fulfil the conditions to be considered refugees; this remains at state discretion. All EU Member States are signatories of the Geneva Convention, which they implement through national legislation.<sup>5</sup>

The UN Compact on Refugees<sup>6</sup>, adopted in 2018 by the United Nations General Assembly, builds on existing international law and standards, including the 1951 Refugee Convention and human rights treaties, and seeks to better define cooperation to share responsibilities.

## EU main legislative acts on asylum

### 1. Dublin system

In the absence of Union competences, the Dublin system was first established by an international Convention in 1990 and was further integrated into Union law and updated in 2003<sup>7</sup> and 2013<sup>8</sup>. Its purpose is to identify a single EU member state responsible for processing an asylum application.

The Dublin III Regulation of 2013 further developed the establishment of responsibility among Member States for examining applications for international protection and the procedures for transfers, without, however, modifying the basic features of the system. The determining Member State is requested to examine a number of criteria to identify the responsible Member State. The criteria range from family members of the applicant in a Member State (for minors also relatives), or issuance of present or previous residence documents or visas. If none of these criteria are applicable, the Member State of first irregular entry becomes responsible. If the determining Member State is not the responsible Member State, a transfer request has to be issued and the applicant has to be transferred to the responsible Member State within a set timeframe. It contains the following safeguards for asylum applicants: (1) a compulsory personal interview, (2) guarantees for minors (including a detailed description of the factors that should lay at the basis of assessing a child's best interests) and extended possibilities of reunifying them with relatives; (3) the right to an effective remedy against a transfer decision; (4) the suspension of the execution of the transfer decision for the period until the appeal is judged, together with the guarantee of the right for a person to remain on the territory pending the decision on the appeal; (5) an obligation to provide access to legal assistance free of charge upon request; (6) a single ground for detention in case of risk of absconding

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<sup>5</sup> <http://www.europarl.europa.eu/EPRS/EPRS-AaG-557004-EU-and-UNHCR-FINAL.pdf>

<sup>6</sup> <https://refugeesmigrants.un.org/refugees-compact>.

<sup>7</sup> Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (The Dublin II Regulation).

<sup>8</sup> Regulation (EU) No 604/2013 of 26 June 2013 (the Dublin III Regulation).

and a strict limitation of the duration of detention; (7) more legal clarity of procedures between Member States - e.g. exhaustive and clearer deadlines. The entire Dublin procedure cannot last longer than 11 months to take charge of a person, or 9 months to take him/her back (except for absconding or where the person is imprisoned).<sup>9</sup>

### **Reform of the Dublin system**

The migratory crisis has highlighted the limits of the current system, which creates a burden for frontline Member States. On 4 May 2016, the European Commission presented a [legislative proposal](#) for the recast of the Dublin III regulation ("Dublin IV"). The proposal aims to determine a single member state permanently responsible for examining the asylum application and provides for an automatic crisis relocation mechanism from countries receiving disproportionate numbers to other Member States. It proposes shorter time limits for sending transfer requests, receiving replies and carrying out transfers of asylum seekers between Member States. The crisis mechanism includes a quota for applicants of international protection per Member State (calculated based on Member State GDP and population size. When the threshold is reached (150% of the quota), the system will trigger a relocation mechanism of asylum seekers to Member States that had received a number of refugees below the quota. The Commission is also proposing high fees for Member States refusing to participate in the crisis relocation mechanism. The proposal seeks to discourage abuse/secondary movements by including clear obligations for applicants to apply in the Member State of first entry and to remain in the Member State determined as responsible, and by reducing material reception benefits as consequences in case of non-compliance; stronger guarantees for unaccompanied minors and a balanced extension of the definition of "family members" by adding siblings.

Instead of a fundamental overhaul of the Dublin regime, as suggested by Parliament, the Commission proposes to streamline and supplement the current rules with a corrective allocation mechanism. This approach was criticized by academic scholars as ineffective and raising protection of human rights concerns.<sup>10</sup>

Parliament's LIBE Committee adopted its [report](#) on 19 October 2017, which plenary confirmed as the mandate for entering into inter-institutional negotiations on 16 November 2017. The [report](#) suggested important amendments to the Commission's proposal. The objectives of the Parliament were to establish true solidarity and to achieve a fair sharing of responsibility in line with Article 80 of the TFEU and to release the burden of frontline Member States. The European Parliament proposed: (1) Applicants who have family members or who have links with a particular Member States shall be relocated to these Member States through a streamlined procedure. Applicants that lack such links with a particular Member State shall be relocated through a corrective allocation system. The relocation system thus replaces the previous "fall-back-criterion" of the Member State of first entry. The system applies at all times, not only in times of crisis and with no thresholds as suggested by the European Commission. (2) A reference point of Member States' population size and GDP serves as a reference key for the corrective allocation mechanism. (3) All applicants would be subject to mandatory security checks and applicants that pose a security risk or are considered manifestly unlikely to qualify as a refugee will not be transferred to other Member States but the determining Member State becomes responsible. (4) The applicant shall be provided with comprehensive information of his/her rights and obligations under the Dublin procedure. (5) The report proposed securing stronger protection and individual guarantees for unaccompanied minors, including an assessment of their best interests. (7) The report suggested a clear system of incentives and disincentives for asylum applicants to avoid absconding and secondary movements and the need to clearly define the meaning of absconding.

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<sup>9</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en)

<sup>10</sup>European Parliament, The Reform of the Dublin III Regulation, June 2016, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571360/IPOL\\_STU\(2016\)571360\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571360/IPOL_STU(2016)571360_EN.pdf)

Three years after the presentation of the proposal, the Council has not been able to adopt a mandate for negotiations with the Parliament. The new Parliament will have to take a decision on how to proceed with this proposal.

## 2. Eurodac Regulation

The Dublin system is supported by Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 ([the Eurodac Regulation](#)) which established a Europe-wide fingerprint database originally only for asylum applicants but following its reform of 2013 also for irregular migrants (having irregularly crossed an external border or are illegally staying) in the EU.

The Eurodac database contains the fingerprints of all irregular migrants and asylum applicants who have been registered in EU Member States and associated countries. This database serves the implementation of the Dublin regulation. It helps to verify whether an applicant has previously claimed asylum in another Member State, or whether an applicant has irregularly crossed in the past an external EU border in order to determine which Member State is responsible for examining his or her asylum application.

### Reform of the Eurodac Regulation

As part of the reform package of 4 May 2016, the Commission presented a [proposal](#) to reinforce the Eurodac Regulation in order to reflect the changes in the Dublin Regulation proposal. The proposed reform of the Eurodac regulation extends its scope by allowing the storage and comparison of facial image data in addition to fingerprints (and alphanumeric data), and adds a new purpose to the database of facilitating return and readmission procedures. The proposal simplifies access for law enforcement authorities, which was introduced in the 2013 reform. The Commission also proposed to lower the minimum age for collecting fingerprints from minors from 14 to 6 years old.. Where it is impossible to take the fingerprints of the third-country national or stateless person the Regulation should also permit the comparison of a facial image without fingerprints. The proposal permits Member States to introduce sanctions, in accordance with their national law, for those individuals who refuse to comply with the fingerprinting procedure.

On 14 June 2017 the LIBE Committee was given green light by plenary to start inter-institutional negotiations on the basis of its [report](#) of 30 May 2017. The [report suggested](#) extending the scope of the Regulation to stateless persons in addition to third-country nationals for the purposes of identifying secondary movements of such persons. The report proposed that Europol should have direct access to the Eurodac database. The report also added a new category of persons in the Eurodac database, those who have been resettled by Member States, upon their arrival in the EU territory.

The report inserted special provisions relating to minors, notably prohibiting the use of coercion against minors for the purpose of taking their fingerprints. Further, a special provision was made that minors' fingerprints should be taken by officials trained specifically to enrol minors' fingerprints and to capture facial images in full respect of the best interests of the child, and that a link should be made with the Schengen Information System (SIS), where missing children alerts are inserted, in case of children gone missing from reception facilities. Members considered that the maximum period for which the biometric data of third-country nationals or stateless persons who have applied for international protection may be kept in the central system should be limited to 5 years. A partial general approach was reached at JHA Council in December 2016. The mandate was extended by Coreper in June 2017 and in February 2018. Negotiations with the Council started in September 2017 and reached the stage of a partial provisional agreement in June 2018. Apart from the resettlement-related category of persons to be included in the database, the other political issue which remained still open was the data storage period for asylum seekers' data, strongly linked with

the Dublin Regulation.<sup>11</sup> Negotiations could not be concluded, notably due to the lack of progress on the Dublin Regulation from the side of the Council.

### 3. Qualification Directive

Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) ([the recast Qualification Directive](#)) sets out the conditions governing eligibility for international protection (refugee and subsidiary protection status). The Qualification Directive transposes the Geneva Convention into EU law. It amends Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the first phase [Qualification Directive](#)).

The Qualification Directive sets out criteria for applicants to qualify for refugee status or subsidiary protection. The Directive grants a range of rights afforded to beneficiaries of these statuses, such as protection from refoulement, residence permits, travel documents, access to employment, access to education, social welfare, healthcare, access to accommodation, access to integration facilities, as well as specific provisions for children and vulnerable persons. The Directive allows Member States to put in place or to keep more favourable standards than those set out in its provisions.<sup>12</sup>

### Reform of the Qualification Directive

As part of the CEAS reform, the Commission presented [a legislative proposal](#) to replace the recast Qualification Directive with a Regulation on 13 July 2016. The aim of the proposal is to ensure greater harmonisation of statuses and forms of protection among Member States; to introduce stricter rules sanctioning secondary movements; to grant protection only for as long as it is needed and to strengthen integration incentives for beneficiaries of international protection.

The LIBE Committee adopted its [report](#) on the legislative proposal on 15 June 2017. On 5 July 2017 the plenary confirmed the decision to enter into interinstitutional negotiations. Parliament's [amendments](#) to the Commission's proposal suggested that protection of asylum seekers should be combined with integration rather than with punitive measures. The Parliament suggested that the assessment of the best interests of the child should be a primary consideration of the relevant authorities when assessing the conditions for internal protection in the case of minors. EU security needs to be balanced with protection for third-country nationals in need. In order to encourage beneficiaries of international protection to remain in the Member State which granted them protection, the length of refugees' and subsidiary protection beneficiaries' residence permits should be aligned. The proposed compulsory review of the status granted to beneficiaries of international protection needs to be amended due to the resulting administrative burden and the negative effect on individuals' integration. Internal protection in one's own country of origin should remain as an option for Member States in limited cases, and not as an obligation.

In June 2018 a provisional agreement was reached with the Council, which did not achieve the necessary support from Member States.<sup>13</sup>

### 4. Asylum Procedures Directive

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ([the recast Asylum Procedures Directive](#)) replaced the first-phase Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ([Asylum](#)

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<sup>11</sup> <https://www.consilium.europa.eu/media/37402/st15252-en18.pdf>

<sup>12</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/refugee-status\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/refugee-status_en)

<sup>13</sup> <https://www.consilium.europa.eu/media/37402/st15252-en18.pdf>

[Procedures Directive](#)). The recast Directive establishes rules and common procedures for lodging asylum applications. It sets time limits for the examination of applications (in principle six months at the administrative stage), while providing for the possibility to accelerate the procedure for applications of those coming from a country of origin being considered as safe or in case of subsequent applications; Member States can voluntarily apply the safe third country concept; the Directive obliges Member States to provide access to legal assistance for applicants and for training to staff of Member States' asylum administration. In addition, it aims to be fairer, by providing support to those in need of special guarantees (e.g. because of age, disability, illness, etc.) including by ensuring that they are granted sufficient time to participate effectively in the procedure and provides for clearer rules on appeals in front of courts or tribunals.

### **Reform of the Asylum Procedures Directive**

On 13 July 2016, the Commission presented [a legislative proposal](#) for an Asylum Procedure Regulation to replace the Asylum Procedure Directive. The proposal aims to harmonise the asylum procedure by obliging Member States to apply an admissibility procedure, an accelerated procedure and border procedures in certain cases. It equally proposes to harmonise procedural guarantees safeguarding the rights of the applicants to reduce incentives for secondary movements, in particular the right to information and legal assistance; to offer stronger protection to vulnerable individuals, in particular unaccompanied minors. It also proposes a common list of safe countries of origin, which was originally proposed as a [separate regulation](#), and of safe third countries.

Parliament's LIBE Committee adopted its [report](#) on 25 April 2018, which plenary confirmed as a negotiating mandate on 30 May 2018. The report [proposed](#) that all applications shall be registered as soon as possible and, in any case, no later than three working days from when it is made. The applicant shall apply in the Member State of first entry or in the Member State where she or he is present and be informed properly of his or her rights to legal assistance and representation. Specific safeguards to children including the right to be heard are enhanced and the border procedure shall never apply to them. Member States shall take the necessary measures to ensure that alternatives to detention are available. Minors shall never be detained as part of border procedures, at transit zones, external borders or at any stage during the determination of their asylum application. The Parliament proposed to keep admissibility and accelerated procedures optional for Member States. In view of the common list of safe countries of origin, during the transitional three-year period, it shall be possible for the Member States to send proposals to add particular countries to the EU common list of safe countries of origin to the Commission.

Three years after the presentation of the proposal, the Council has not been able to adopt a mandate for negotiations with the Parliament. The new Parliament will have to take a decision on how to proceed with this proposal.<sup>14</sup>

### **5. Reception Conditions Directive**

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ([the Reception Conditions Directive Recast](#)) replaced the first phase Council Directive 2003/9/CE on minimum standards for the reception of asylum seekers. The recast Directive aims at ensuring dignified and more harmonized standards of reception conditions. It ensures that applicants have access to housing, food, clothing, health care (including medical and psychological care), education for minors and access to employment under certain conditions. The Directive also provides particular attention to vulnerable persons, especially unaccompanied minors and victims of torture. It also includes rules regarding detention of asylum seekers, ensuring that their fundamental rights are fully respected.

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<sup>14</sup> <https://www.consilium.europa.eu/media/37402/st15252-en18.pdf>

## **Reform of the Reception Conditions Directive**

On 13 July 2016, the European Commission put forward a [legislative proposal](#) on the reform of the recast Reception Conditions Directive. The current Reception Conditions Directive is broad in its definition of what constitutes an adequate standard of living, which leads to considerably varied reception systems and reception standards across Member States. One of the aims of the recast, which runs across the all Commission's latest CEAS reform proposals, is to limit secondary movements of asylum seekers through reducing the discrepancies among the different Member States' reception conditions. This aim is also pursued through further refining the permitted restrictions of freedom of movement for asylum applicants. The draft proposes to restrict asylum seekers' access to certain reception conditions to the Member State responsible for their asylum application under Dublin, adopting thus a punitive approach towards those moving across Member States.

Parliament's LIBE Committee adopted its [report](#) on 25 April 2017, to which plenary gave green light on 17 May 2018 as the mandate for entering into inter-institutional negotiations. The [report adopted](#) by the LIBE Committee does not support the Commission's position, which envisaged a stricter stance towards applicants who move across Member States. The Committee proposed to strengthen measures related to information given to applicants, including details of the circumstances under which the granting of certain reception conditions may be restricted. According to the report, detention of asylum-seekers should be a measure of last resort and should always be based on a decision by a judicial authority. The report also contained several safeguards for children: detention or any confinement of children, whether unaccompanied or with their family, should be prohibited, every unaccompanied minor should get a guardian from the moment of his or her arrival, as well as immediate access to health care and education. Parliament stressed that Member States should in all circumstances ensure access to health care and an adequate standard of living for applicants, in particular to applicants with specific reception needs (children, women, victims of violence). Parliament proposed that Member States should also take effective steps to ensure that asylum seekers have quick and efficient access to the national labour market, no later than two months from the date when the application for international protection was made.

In June 2018 Parliament and the Council reached a provisional agreement on the Reception Conditions Directive. Negotiations were not concluded, however, as it has been the case with the rest of the CEAS package, notably due to lack of progress on Dublin Regulation in the Council side.

### **6. European Asylum Support Office (EASO)**

EASO was set up in 2011 to enhance practical cooperation among Member States on asylum-related matters and for assisting Member States in implementing their obligations under the CEAS. It was established by [Regulation \(EU\) 439/2010](#) as a Support Office independent in technical matters and enjoying legal, administrative and financial autonomy.

EASO supports Member States in implementing the different parts of the CEAS. EASO acts as a centre of expertise on asylum, providing scientific and technical support to Member States, collecting and facilitating the exchange of information, supporting Member States subject to particular pressure on their asylum and reception systems by providing technical and operational assistance. Through its support function, EASO assists EU States in fulfilling their European and international obligations in the field of asylum.<sup>15</sup>

## **Reform of the EASO**

### **a. The original EU Asylum Agency proposal**

In May 2016, as part of its proposed reform of the CEAS, the Commission presented [a draft proposal](#) to transform the existing European Asylum Support Office into a European Union Agency for Asylum

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<sup>15</sup> EASO webpage: <https://www.easo.europa.eu/about-us/what-we-do>

(EUAA). The proposal aimed to upgrade EASO into a fully-fledged Agency by allowing it to provide strengthened operational and technical assistance to Member States, granting it a monitoring role vis-a-vis Member States regarding all aspects of CEAS, stepping up its information and analysis tasks, including with regard to an eventual EU list of safe countries of origin or safe third countries, or by producing relevant common analysis on countries of origin. The proposal also provided for a fixed pool of 500 experts, who could be called upon in case the Agency would need to provide assistance in situations requiring quick deployment.

The LIBE Committee [adopted its report](#) and the decision to enter into negotiations on 8 December 2016. The report aimed to strengthen the Agency's independence and own initiative, put its action as part of the migration management support teams at equal level as its 'sister' Agency, Frontex, enhanced the monitoring options, and further streamlined fundamental rights in the Agency's mandate and provided for the Agency to deploy liaison officers in Member States and third countries.

The Council's mandate was confirmed by Coreper on 20 December 2016. Trilogue negotiations started and reached under Maltese Presidency a provisional agreement in June 2017. Technical work continued under Estonian Presidency, following which recitals were finalised, and COREPER 'took note' of the full text.

### **b. The amended EU Asylum Agency proposal**

On 12 September 2018, while the June 2017 provisional agreement was still on hold, the Commission adopted an [amended proposal](#) for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010. The amended proposal contains certain clarifications notably on operational tasks of the EUAA and aims to align certain provisions of the provisional agreement on the EUAA to its new draft Regulation on the European Border and Coast Guard - Frontex (in September 2018 simultaneously proposed), and further strengthen cooperation between the two Agencies.

The LIBE Committee rejected the amended proposal and insisted on the need to conclude the provisional agreement as the only solid basis for the Agency's new mandate. The Council has been unable to reach a mandate on the amended proposal so far.

## **7. Temporary Protection Directive**

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof ([the Temporary Protection Directive](#)) was developed as a framework for managing an unexpected mass influx of displaced persons and provide them with immediate protection. The aims of the Directive are to reduce disparities between the policies of the EU Member States on reception and treatment of displaced persons in a situation of mass influx, and also to promote solidarity among EU States. However, the Directive has never been applied in practice, despite a number of major refugee influxes to the EU since its development due to the unanimity requirement for a decision of the Council, the vagueness of its terms, and tensions between the Member States in the Council over burden-sharing.

## **8. EU resettlement framework**

Article 78(3) of the TFEU foresees the general possibility for supporting Member States in response to the sudden inflow of third-country nationals, referred to as an emergency situation. The concepts of relocation and resettlement were first proposed in [the European Agenda on Migration](#) (EAoM) proposed on 13 May 2015. The EAoM calls on the EU to step up its resettlement efforts of non-EU national or stateless persons in clear need of international protection from a third country to a Member State in order to avoid displaced persons in need of protection having to resort to the criminal networks of smugglers and traffickers to arrive in the EU. Resettlement is a joint

responsibility of the international community, with the United Nations High Commissioner for Refugees (UNHCR)<sup>16</sup> given the task of identifying when people in need of international protection cannot stay safely in their own countries or a third country of first displacement, and conducting submissions on resettlements in agreement with the country of resettlement.

Following the publication of the EAoM, resettlement proposals were aligned to the first implementation package, through the [Commission Recommendation](#) on a European resettlement scheme (8 June 2015).

On 13 July 2016, as part of the second CEAS reform package, the Commission submitted a proposal for [a Regulation](#) to establish a permanent EU resettlement framework. It would complement the current ad hoc multilateral and national resettlement programmes by providing common EU rules on the admission of third-country nationals including financial support for Member States' resettlement efforts. The proposal aims to provide a common approach to safe and legal arrivals in the EU for third-country nationals in need of international protection, to provide common EU rules for resettlement and humanitarian admission, to enable the sharing of the protection responsibility with countries to which or within which a large number of persons in need of international protection has been displaced in order to alleviate the pressure on those countries, to contribute to global resettlement and humanitarian admission initiatives and to provide the financial support for the Member States' resettlement efforts.

On 12 October 2017 the LIBE Committee adopted the draft [report](#) and on 25 October 2017 plenary confirmed the mandate to enter into inter-institutional negotiations. According to the [report](#), Member States should provide resettled persons with a long-lasting solution by granting refugee or subsidiary protection status. Member States may issue permanent residence permits. The report calls on Member States to increase resettlement efforts and the number of resettlement places. The EU resettlement framework should complement international structures for resettlement and should target to resettle at least 20% of the annual projected global resettlement needs, as defined by UNHCR. Furthermore, resettlement should not be used for other foreign policy objectives, or depend on third countries' cooperation on other migration-related matters, as proposed by the European Commission. Instead, resettlement should be a humanitarian programme based on the needs of the most vulnerable third countries nationals in need of international protection and the EU resettlement framework should be a tool to provide protection and a durable solution. The UNHCR should be the main institution that refers resettlement cases to Member States. A Union resettlement plan should be adopted every two years in consultation with the High-Level Resettlement Committee, whose membership has been broadened to ensure the necessary transparency and should be based on UNHCR Projected Global Resettlement Needs.

Contrary to the Commission proposal, the report retains the allocation of 6 000 EUR from the AMIF fund for every person resettled under Member States' national resettlement programmes, in support of EU Member States that have running and successful resettlement programmes that should be encouraged to continue and to expand, share their experience and pool resources. In order to create the necessary incentives for the EU framework, it also supports 10 000 EUR per resettled person, if Member States chooses to resettle under the EU resettlement framework, as proposed by the Commission.

A provisional agreement on main elements of the Regulation was reached on 13 June 2018 between Parliament and Council. Nevertheless, negotiations were not concluded, as it has been the case with the rest of the CEAS package, notably due to lack of progress on the Council's side.

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<sup>16</sup> In its resettlement projections for 2019 the UNHCR indicated that the resettlement needs in Europe remain high in 2019, with 420,750 persons projected to be in need of resettlement. The projection for 2019 is significantly greater than the needs projected for 2018, which was 302,000. The lack of alternative durable solutions for Syrians is the principal reason for substantial resettlement needs, with Syrians in Turkey making up 95 per cent of those projected to be in need of resettlement from Europe: <https://www.unhcr.org/protection/resettlement/5b28a7df4/projected-global-resettlement-needs-2019.html>

## Tools to support the evidence-based policies

Numerous meetings were held by the European Parliament on development of the CEAS. The key meetings, public hearings are described below:

### 1. Meetings with experts

AFET, LIBE, DROI Joint Hearing [Respecting human rights in the context of migration flows in the Mediterranean](#) on 15 September 2015;  
Interparliamentary Committee Meeting [A holistic approach to migration](#) on 23 September 2015;  
LIBE Hearing [The impact of recent migration flows on implementation and revision of the CEAS](#), 3 June 2016;  
Joint BUDG, AFET, DEVE, LIBE Hearing [Budgetary implications of the current refugee and migration crisis](#) on 30 June 2016;  
LIBE Hearing [The reform of the Dublin System and Crisis Relocation](#) on 10 October 2016;  
LIBE Hearing [EU Resettlement Framework](#) on 14 November 2016;  
Interparliamentary Committee Meeting [The Third Reform of the Common European Asylum System - Up for the Challenge](#) on 28 February 2017;  
LIBE Hearing [Agreements and cooperation with third countries on migration management and return](#) on 28 November 2017;  
Interparliamentary Committee Meeting [The European Agenda on Migration-What about Legal Avenues and Integration?](#) on 24 January 2018;  
Joint LIBE and AFET interparliamentary meeting [The UN Global Compacts on refugees and migrants and the role of Parliaments](#) on 27 February 2018;  
Joint LIBE and AFET interparliamentary meeting [The European Agenda on Migration-What about Legal Avenues and Integration?](#) on 24 January 2018;  
Joint BUDG, CONT and LIBE Hearing [Assessing the flow of EU migration funding within the Union](#) on 16 May 2018;  
LIBE Hearing [The Implementation of the Facilitation Directive and humanitarian assistance](#) on 27 September 2018.

### 2. Analyses of the Policy Department for Citizen's rights and Constitutional Affairs

At the request of the LIBE Committee the European Parliament's Department for Citizen's Rights and Constitutional Affairs commissioned studies and in-depth analyses to support the work of the Committee in the area of development of the CEAS. Its main analyses during the current parliamentary term are the following:

The study [New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International Protection](#) published in October 2014;

The study [EU Funds for Migration Policies: Analysis of Efficiency and Best Practice for the Future](#) published in July 2015;

The study [Enhancing the Common European Asylum System and Alternatives to Dublin](#) published in July 2015;

The study [EU Cooperation with Third Countries in the Field of Migration](#) published in October 2015;

The study [Fit for Purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants](#) published in January 2016 and updated in December 2018;

The study [On the Frontline: The Hotspot Approach to Managing Migration](#) published in May 2016;

The study [The Implementation of the Common European Asylum System](#) published in May 2016;

The study [The Reform of the Dublin III Regulation](#) published in June 2016;

The study [Implementation of the 2015 Council Decisions Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and of Greece](#) published in March 2017;

The study [Brexit and Migration](#) published in October 2018;

The in-depth analysis [Background Information for the LIBE Delegation on Migration and Asylum in Italy - April 2017](#);

The study [International Protection in Greece - Background information for the LIBE Committee delegation to Greece 22-25 May 2017](#).

## Conclusions

In the recent years the European Union faced the most severe migratory crisis since the Second World War. The crisis exposed deficiencies of the existing EU regulatory asylum framework and put issues of migration, asylum and protection of external borders on the top of the political agenda.

The European Parliament played a key role in responding to the challenges of the migration pressure on EU Member States. The Parliament consistently worked for a holistic approach to migration in which the CEAS is one element together with legal migration, border control and cooperation with third countries. The blue print for Parliament with regard to a holistic approach to migration is its resolution of April 2016.

During the 2014-2019 legislative term the European Parliament, as a co-legislator, developed a negotiating position on all legislative proposals for the reform of the CEAS presented in two packages of legislative proposals in May and July 2016. Unfortunately, the Council was not able to elaborate a position for negotiations with the Parliament for the Dublin Regulation Recast and the Asylum Procedure Regulation. This overshadowed the work on the other proposals for the reform to the extent that no agreements on any of the proposals could be concluded. The new Parliament will have to decide on how to continue the work on this reform, which is an important element of a holistic approach to migration. The overall cost of the gaps in the European asylum legislation and policies leading to a number of economic impacts (the cost of non-Europe) is about €49 billion per year (out of which the estimated cost of lost lives is around €12 billion).<sup>17</sup>

While the Parliament has fully played its role during the 2014-2019 legislative term to develop solutions to the deficits shown by the migration crisis, the results in terms of finalised improved legislation in the area of asylum are meagre because of the blockage in the Council. It will be up to the new Parliament to ensure that the Common European Asylum System contributes as a part of a holistic approach to migration to improvements for asylum seekers and Member States in the spirit of solidarity and fair sharing of responsibility in line with the Treaties.

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<sup>17</sup> [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627117/EPRS\\_STU\(2018\)627117\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627117/EPRS_STU(2018)627117_EN.pdf)

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