The Common European Asylum System - third reform

PE 580.866

1. Asylum policy.......................................................................................................................... 3
2. Immigration policy...................................................................................................................... 9
3. Management of the external borders......................................................................................... 14
ABOUT THE PUBLICATION

This leaflet contains a compilation of Fact Sheets provided by Parliament’s Policy Departments and Economic Governance Support Unit on the relevant policy area.

The Fact Sheets are updated regularly and published on the website of the European Parliament: http://www.europarl.europa.eu/factsheets

ABOUT THE PUBLISHER

Author of the publication: European Parliament

Department responsible: Unit for Coordination of Editorial and Communication Activities
E-mail: editorial-secretariat@europarl.europa.eu

Manuscript completed in February, 2017
© European Union, 2017

DISCLAIMER

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the publisher is given prior notice and sent a copy.
1 - ASYLUM POLICY - [5.12.2.]

The aim of EU asylum policy is to harmonise asylum procedures in the Member States by establishing common asylum arrangements, with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.

LEGAL BASIS

— Articles 67(2) and 78 of the Treaty on the Functioning of the European Union;
— Article 18 of the EU Charter of Fundamental Rights.

OBJECTIVES

The objectives are to develop a common policy on asylum, subsidiary protection and temporary protection, with a view to offering an appropriate status to all third-country nationals who need international protection, and to ensure that the principle of non-refoulement is observed. This policy must be consistent with the 1951 Geneva Convention and the 1967 Protocol thereto. Neither the Treaty nor the Charter provides a definition of the terms ‘asylum’ and ‘refugee’. They both refer explicitly to the Geneva Convention of 28 July 1951 and the Protocol thereto of 31 January 1967.

ACHIEVEMENTS

A. Advances under the Treaties of Amsterdam and Nice

In 1999 the Treaty of Amsterdam granted the EU institutions new powers to draw up legislation in the area of asylum using a specific institutional mechanism.

In 2001 the Treaty of Nice provided that, within five years of its entry into force, the Council should adopt measures on a number of fronts, in particular criteria and mechanisms for determining which Member State is responsible for considering an application for asylum made by a third-country national within the EU, as well as certain minimum standards (in relation to the reception of asylum seekers, the status of refugees and procedures).

The Treaty stipulated that the Council should act unanimously, after consulting Parliament, when defining the common rules and basic principles governing these issues. It provided that, after this initial phase, the Council might decide that the normal codecision procedure should apply and that it should thus henceforth adopt its decisions by qualified majority. The Council took a decision to that effect at the end of 2004 and the codecision procedure has applied since 2005.

B. The Treaty of Lisbon

The Treaty of Lisbon changed the situation by transforming the measures on asylum into a common policy. Its objective is no longer simply the establishment of minimum standards, but rather the creation of a common system comprising a uniform status and uniform procedures.

This common system must include:
— a uniform status of asylum,
— a uniform status of subsidiary protection,
— a common system of temporary protection,
— common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status,
— criteria and mechanisms for determining which Member State is responsible for considering an application,
— standards concerning reception conditions,
— partnership and cooperation with third countries.

The Treaty did not make any changes to the decision-making procedure within the EU. However, the arrangements for judicial oversight by the Court of Justice of the European Union have been improved significantly. Preliminary rulings may now be sought by any court in a Member State, rather than just national courts of final instance, as was previously the case. This should enable the Court of Justice to develop a larger body of case law in the field of asylum.

C. European Council programmes

The series of programmes adopted by the European Council have had a far-reaching impact on the implementation of European asylum policy.

With the adoption of the Tampere Programme in October 1999, the European Council decided that the common European system should be implemented in two phases. In November 2004, the Hague Programme called for the second-phase instruments and measures to be adopted by the end of 2010.

The European Pact on Migration and Asylum, adopted on 16 October 2008, ‘solemnly reiterates that any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention’. It calls for proposals aimed at establishing ‘in 2010 if possible and in 2012 at the latest, a single asylum procedure comprising common guarantees and [...] adopting a uniform status for refugees and the beneficiaries of subsidiary protection’.

The Stockholm Programme, adopted by the European Council on 10 December 2009 for the 2010-2014 period, reaffirms ‘the objective of establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection’. It emphasises, in particular, the need to promote effective solidarity with those Member States facing particular pressures, and the central role to be played by the new European Asylum Support Office.

The Lisbon Treaty formally recognises the European Council’s pre-eminent role in ‘[defining] the strategic guidelines for legislative and operational planning within the area of freedom, security and justice’ (Article 68 TFEU). In June 2014, the European Council defined these guidelines for the coming years, building on the progress achieved by the Stockholm Programme. They stress that the full transposition and effective implementation of the Common European Asylum System (CEAS) is an absolute priority.
D. The main existing legal instruments

— Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece;

— Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece;


— 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 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice[3] (Regulation (EU) No 603/2013 will start applying two years after its entry into force and repeal the previous Council Regulation (EC) No 2725/2000 and its implementing Regulation (EC) No 407/2002);


— Directive 2011/95/EU of the European Parliament and of the Council 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

---


— 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[9].

In response to the human tragedy unfolding across the Mediterranean, the Commission adopted the European Agenda on Migration in May 2015[10], aimed at strengthening the common asylum policy. It sets out further steps towards a reform of the Common European Asylum System, which were presented in two packages of legislative proposals in May and July 2016. The main pending proposals are:


— Proposal for a Regulation of the European Parliament and of the Council 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (COM(2016) 0466);


— Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (COM(2016) 0270);

— Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining

an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) (COM(2016) 0272);


— Proposal for a regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (COM(2015) 0450);


ROLE OF THE EUROPEAN PARLIAMENT

Since 2005 the European Parliament has been a co-legislator in asylum-related legislation and therefore on an equal footing with the Council of the EU. Moreover, the resolutions of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, of 10 September 2015 on migration and refugees in Europe, of 11 September 2012 on enhanced intra-EU solidarity in the field of asylum, of 21 June 2007 on asylum: practical cooperation, quality of decision-making in the common European asylum system, of 2 September 2008 on the evaluation of the Dublin system and of 10 March 2009 on the future of the Common European Asylum System provide an overview of Parliament’s main positions and concerns.

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.

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 has supported the creation of a European Asylum Support Office.

Parliament has also brought an action for annulment before the Court of Justice. This instrument was successfully used to obtain the annulment of the provisions concerning the arrangements for adopting the common list of third countries regarded as safe countries of origin and safe third countries in Europe provided for in Directive 2005/85/EC (ECJ, judgment of 6 May 2008, Case C-133/06).

Parliament has, moreover, organised a series of visits to reception centres and detention centres in the Member States and has highlighted the shortcomings in the Member States’ application of the existing legislation.
A forward-looking and comprehensive European immigration policy, based on solidarity, is a key objective for the European Union. Immigration policy is intended to establish a balanced approach to dealing with both regular and irregular immigration.

LEGAL BASIS

Articles 79 and 80 of the Treaty on the Functioning of the European Union (TFEU).

COMPETENCES

Regular immigration: the EU is competent to lay down the conditions governing entry into and legal residence in a Member State, including for the purposes of family reunification, for third-country nationals. Member States retain the right to determine volumes of admission for people coming from third countries to seek work.

Integration: the EU may provide incentives and support for measures taken by Member States to promote the integration of legally resident third-country nationals; EU law makes no provision for the harmonisation of national laws and regulations, however.

Combating irregular immigration: the European Union is required to prevent and reduce irregular immigration, in particular by means of an effective return policy, in a manner consistent with fundamental rights.

Readmission agreements: the European Union is competent to conclude agreements with third countries for the readmission to their country of origin or provenance of third-country nationals who do not or no longer fulfil the conditions for entry into, or presence or residence in, a Member State.

OBJECTIVES

Defining a balanced approach to immigration: the EU aims to set up a balanced approach to dealing with regular immigration and combating irregular immigration. Proper management of migration flows entails ensuring fair treatment of third-country nationals residing legally in Member States, enhancing measures to combat irregular immigration and promoting closer cooperation with non-member countries in all fields. It is the EU’s aim to establish a uniform level of rights and obligations for regular immigrants, comparable with that for EU citizens.

Principle of solidarity: under the Lisbon Treaty, immigration policies are to be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States (Article 80 TFEU).

ACHIEVEMENTS

A. Institutional developments brought about by the Lisbon Treaty

The Lisbon Treaty, which entered into force in December 2009 (1.1.5), introduced codecision and qualified majority voting on regular immigration and a new legal basis for integration measures. The ordinary legislative procedure now applies to policies on both irregular and regular immigration, making Parliament a co-legislator on an
equal footing with the Council. The provisional measures to be taken in the event of a sudden inflow of third-country nationals are adopted by the Council alone, however, after consulting Parliament (Article 78(3) TFEU).

The Lisbon Treaty also made it clear that the EU shares competence in this field with the Member States, in particular as regards the number of migrants allowed to enter a Member State to seek work (Article 79(5) TFEU). Finally, the Court of Justice now has full jurisdiction in the field of immigration and asylum.

B. Recent policy developments

1. The ‘Global Approach to Migration and Mobility’

The ‘Global Approach to Migration and Mobility’ adopted by the Commission in 2011 establishes a general framework for the EU’s relations with third countries in the field of migration. It is based on four pillars: regular immigration and mobility, irregular immigration and trafficking in human beings, international protection and asylum policy, and maximising the impact of migration and mobility on development. The human rights of migrants are a cross-cutting issue in the context of this approach.

2. The June 2014 strategic guidelines

The Stockholm Programme, adopted in December 2009 as a successor to the multiannual programmes adopted at Tampere (1999) and The Hague (2004), expired in December 2014. In March 2014, the Commission published a new communication setting out its vision on the future agenda for home affairs, entitled ‘An open and secure Europe: making it happen’. In accordance with Article 68 TFEU, in its conclusions of 26 and 27 June 2014 the European Council then defined the ‘strategic guidelines for legislative and operational planning within the area of freedom, security and justice’ for the period 2014-2020. These no longer constitute a programme, but rather guidelines focusing on the objective of transposing, implementing and consolidating the existing legal instruments and measures. The guidelines stress the need to adopt a holistic approach to migration, making the best possible use of regular migration, affording protection to those who need it, combating irregular migration and managing borders effectively.

3. European Agenda on Migration

On the basis of a Commission proposal (10-point action plan), on 23 April 2015 the Member States undertook (see European Council statement) to take swift action to save lives and step up the EU’s action in the field of migration. A European Parliament resolution was adopted a few days later, on 29 April 2015.

On 13 May 2015, the Commission published the European Agenda on Migration. The Agenda proposes immediate measures to cope with the crisis in the Mediterranean and measures to be taken over the next few years to manage all aspects of immigration more effectively.

As regards the medium and long term, the Commission proposes guidelines in four policy areas: reducing incentives for irregular immigration; border management – saving lives and securing external borders; developing a stronger common asylum policy; and establishing a new policy on regular immigration, modernising and revising the ‘blue card’ system, setting fresh priorities for integration policies and optimising the benefits of migration policy for the individuals concerned and for countries of origin. The Agenda also launched the idea of setting up EU-wide relocation and resettlement schemes (see fact sheet on asylum policy 5.12.2), announced the ‘Hotspot’ approach...
(where relevant EU agencies work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants), and proposed a possible CSDP operation in the Mediterranean to dismantle smuggling networks and combat trafficking in persons.

On the basis of this agenda, on 6 April 2016 the Commission published its guidelines on regular immigration in a communication entitled: ‘Towards a reform of the common European asylum system and enhancing legal avenues to Europe’. There are four main strands to the guidelines as regards regular migration policies: revising the Blue Card Directive, attracting innovative entrepreneurs to the EU, developing a more coherent and effective model for regular immigration in the EU by assessing the existing framework, and strengthening cooperation with the key countries of origin.

C. Recent legislative developments

Since 2008, a number of significant directives on immigration have been adopted and some other relevant directives are due to be revised in the near future. Moreover, the Commission is currently carrying out a Fitness Check to evaluate and assess the existing EU legislation on legal migration.

1. Regular immigration

Following the difficulties encountered in adopting a general provision covering all labour immigration into the EU, the current approach consists of adopting sectoral legislation, by category of migrants, in order to establish a regular immigration policy at EU level.

Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment created the ‘EU blue card’, a fast-track procedure for issuing a special residence and work permit, on more attractive terms, to enable third-country workers to take up highly qualified employment in the Member States. The first report on the implementation of this directive was published in May 2014. In June 2016, the Commission proposed a revision of the system currently in place, which is functioning properly in only a very small number of Member States; work on this revision is ongoing in Parliament and the Council.

The Single Permit Directive (2011/98/EU) sets out a common, simplified procedure for third-country nationals applying for a residence and work permit in a Member State, as well as a common set of rights to be granted to regular immigrants. The first report on its implementation was due by December 2016.

Directive 2014/36/EU, adopted in February 2014, regulates the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers. Migrant seasonal workers are allowed to stay legally and temporarily in the EU for a maximum period of between five and nine months (depending on the Member State) to carry out an activity dependent on the passing of seasons, while retaining their principal place of residence in a third country. The directive also clarifies the set of rights to which such migrant workers are entitled.

Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer was adopted on 15 May 2014. The deadline for transposition of this directive was 29 November 2016, and it will make it easier for businesses and multinational corporations to temporarily relocate their managers, specialists and trainee employees to their branches or subsidiaries located in the European Union.
Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing was adopted on 11 May 2016, and is to be transposed by 23 May 2018. It replaces the previous instruments covering students and researchers, broadening their scope and simplifying their application.


2. Integration

Directive 2003/86/EC sets out provisions on the right to family reunification. Since the 2008 implementation report concluded that it was not being fully and correctly applied in the Member States, the Commission published a communication, in April 2014, providing guidance to the Member States on how to apply it.

The EU’s competence in the field of integration is limited. Existing instruments include the European Migration Forum (formerly the European Integration Forum); the [Website on Integration](#); and the network of National Contact Points on Integration. In July 2011, the Commission adopted the European Agenda for the Integration of Third-Country Nationals. More recently, in June 2016 the Commission put forward an action plan, setting out a policy framework and practical steps to help Member States integrate the 20 million non-EU nationals legally resident in the EU.

3. Irregular immigration

The EU has adopted some major pieces of legislation to combat irregular immigration:


— The ‘Return Directive’ (2008/115/EC) sets out common EU standards and procedures for returning irregularly resident third-country nationals. The first report on its implementation was adopted in March 2014. On 9 September 2015, the Commission published a European Union action plan on return (COM(2015)0453), which was followed by the adoption, in October 2015, of the Council conclusions on the future of the return policy.

— Directive 2009/52/EC specifies sanctions and measures to be applied in Member States against employers of illegally resident third-country nationals. The first report on the implementation of the directive was submitted on 22 May 2014.

At the same time, the EU is negotiating and concluding readmission agreements with countries of origin and transit with a view to returning irregular migrants and cooperating in the fight against trafficking in human beings. These agreements include reciprocal cooperation commitments between the EU and its third-country partners.
ROLE OF THE EUROPEAN PARLIAMENT

Since the entry into force of the Lisbon Treaty, Parliament has been actively involved, as a full co-legislator, in the adoption of new legislation dealing with both irregular and regular immigration.

On 17 December 2014, Parliament adopted a resolution on the situation in the Mediterranean and the need for a holistic EU approach to migration, which instructed its Committee on Civil Liberties, Justice and Home Affairs (LIBE) to draft an own-initiative report. The report, which was accompanied by eight Working Documents focusing on different aspects of migration and asylum policy, and by the Opinions of several other parliamentary committees, was adopted by the plenary on 12 April 2016.

Rosa Raffaelli
01/2017
3 - MANAGEMENT OF THE EXTERNAL BORDERS - [5.12.4.]

Border management policy has witnessed considerable developments, with the creation of instruments and agencies such as the Schengen Information System, the Visa Information System and the European Border and Coast Guard Agency. The challenges linked to the increase in mixed migration flows into the EU, as well as heightened security concerns, have triggered a new period of activity, with a shift towards more direct operational support and the Europeanisation of border management policy.

LEGAL BASIS

Articles 67 and 77 TFEU.

OBJECTIVES

A single area without internal border checks — the Schengen Area — requires a common policy on external border management. The Union therefore sets out to establish common standards with regard to controls at its external borders and to gradually put in place an integrated system for the management of those borders.

ACHIEVEMENTS

The first step towards a common external border management policy was taken on 14 June 1985 when five of the then ten Member States of the European Economic Community signed the Schengen Agreement, supplemented five years later by the Convention implementing the Schengen Agreement. The Schengen Area, the borderless zone created by the Schengen acquis (as the agreements and rules are collectively known), currently comprises 26 European countries (for more details on the Schengen Area, see 2.1.3).

A. The Schengen external borders acquis

The rules that make up today’s Schengen external borders acquis, which builds on the original acquis incorporated into the EU legal order by the Treaty of Amsterdam, are to be found across a broad range of measures, which can be roughly divided into five categories.

Firstly, the central pillar of external border management is the Schengen Borders Code, which lays down rules on external border crossings and conditions governing the temporary reintroduction of internal border checks. Secondly, as not all Member States have external borders to control and not all are equally affected by border traffic flows, the EU uses its funds to attempt to offset some of the costs for Member States at the external borders. For the 2007–2013 period, this financial burden-sharing mechanism came in the form of the External Borders Fund. For the 2014–2020 period this has been replaced by the Internal Security Fund: Borders and Visa. The third category of measures relates to the establishment of centralised databases for the purposes of migration and border management: the Schengen Information System (SIS), the Visa Information System (VIS), and Eurodac, the European fingerprint database for identifying asylum seekers and ensuring the proper implementation of the
Dublin Regulation (for more details on Eurodac and the Dublin Regulation, see 5.12.2). Fourthly, there is a set of measures (known as the Facilitators Package[1]) designed to prevent and penalise unauthorised entry, transit and residence. Lastly, there are measures geared towards operational cooperation in border management, centred on the European Border and Coast Guard Agency (the former European Agency for the Coordination of Operational Cooperation at the External Borders of the Member States (Frontex), with expanded tasks).

1. The Schengen Information System (SIS)

Now in its second generation, the Schengen Information System provides the information management infrastructure to support border control and the related security tasks of police and judicial cooperation. Participating states feed ‘alerts’ on wanted or missing persons, lost or stolen property and entry bans into the database, which is directly accessible to all police officers and law enforcement officials and authorities who need the information in the database to carry out their work. Where additional information on alerts in the Schengen Information System is required, this information is exchanged via the national network of Sirene (Supplementary Information Request at the National Entry) offices established in all Schengen states. These offices coordinate responses to alerts in the SIS and ensure that appropriate action is taken, for example if a wanted person is arrested, a person who has been refused entry to the Schengen Area tries to re-enter, or a stolen car or ID document is seized. The introduction of the second-generation Schengen Information System (SIS II), with new functionalities and features such as biometric data and the interlinking of alerts, was significantly delayed owing to the system’s complexity. Initially due to come on stream in 2007, it eventually became operational on 9 April 2013. It is managed — together with the VIS and Eurodac databases — by the agency for the operational management of large-scale IT systems in the area of freedom, security and justice, eu-LISA.

2. The Visa Information System (VIS)

The aim of the VIS is to improve the implementation of the common visa policy, consular cooperation and consultations between the central visa authorities. The VIS is connected to all visa-issuing consulates of the Schengen states and to all their external border crossing points. At these border points, the VIS allows border guards to check whether the person in possession of a biometric visa is actually the person who applied for it. This is done by cross-checking fingerprints both against the biometric record attached to the visa and across the whole VIS database. High levels of security are built into the system to ensure that it remains robust and available at all times and that data are only accessed by authorised persons and for authorised purposes. Law enforcement authorities and Europol have access to the system for the purposes of detecting and investigating terrorist offences and other serious crimes. The VIS began operations in all Schengen states’ visa-issuing consulates in North Africa in October 2011 and has now been rolled out across the world.

3. The European Border and Coast Guard Agency (the former Frontex agency with expanded tasks)

The former Frontex agency has been expanded to become the European Border and Coast Guard (EBCG) Agency under the European Border and Coast Guard

The EBCG’s main role is to help provide integrated border management at the external borders. Its tasks are also to ensure the effective management of migration flows and to provide a high level of security for the EU. At the same time it helps safeguard free movement within the EU and fully respects fundamental rights. It consists of a European Border and Coast Guard Agency and the national authorities responsible for border management. The main focus of its activities is the establishment of an operational strategy for border management and the coordination of assistance from all the Member States. It is headquartered in Warsaw.

B. Developments in the EU’s management of its external borders

Since the creation of Frontex, several practical steps have been taken towards more integrated external border management: some significant upgrades to technical infrastructure; a raft of joint border management operations; and the development of rapid response capability (initially through rapid border intervention teams (RABITs), and, since 2011, also through European Border Guard Teams). The pace of change has quickened with the large-scale loss of life in the Mediterranean over recent years coupled with the huge influx of refugees and migrants. Joint Operation Triton — launched in late 2014 and substantially scaled up in 2015 — is tasked with patrolling the sea border, primarily between Libya and Italy, and brings together staff and equipment from a number of Member States to provide frontline operational support to Italy. In Greece, the existing Joint Operation Poseidon was significantly scaled up in December 2015 to become a rapid intervention operation, with more staff and technical equipment deployed to deal with the external border management challenges. In a similar vein, EBCG, together with other relevant EU agencies, has played an important role in another dimension of the response to the challenges facing some Member States: the creation of ‘hotspots’ and the deployment of what are termed Migration Management Support Teams. These teams bring together the European Asylum Support Office (see 5.12.2), Europol (see 5.12.7) and the EBCG - in partnership with national authorities and other agencies - to identify, screen and register migrants on entry into the EU, and to organise return operations for those who have no right to stay. The EBCG is the lead agency in the EU Regional Task Forces, which are headquartered in Catania for the ‘hotspots’ in Italy and in Piraeus for those in Greece. Both the maritime operations and the direct support to Member States at the ‘hotspots’ represent a tangible European response to what is both a humanitarian crisis and a border management challenge.

Both the ongoing influx of refugees and migrants as well as a heightened terrorist threat are leading to the further Europeanisation of border management. In particular, to address the phenomenon of so-called ‘foreign fighters’ the proposal to introduce mandatory checks on EU citizens entering or exiting the Schengen Area at land, sea or air borders through a targeted amendment of the Schengen Borders Code was recently adopted. Under this change, citizens would systematically be checked against the SIS II database and the Interpol Stolen and Lost Travel Documents Database.

The other key development in border policy centres on the ‘Smart Borders’ package, designed to modernise border management by automating border checks and enhancing exit and entry information. In October 2011 the Commission presented

---

a communication on Smart Borders, following this up with a legislative proposal in February 2013. The package comprised two components: an Entry/Exit System (EES), a database to record time and place of entry and the length of authorised short stays, and a Registered Traveller Programme (RTP) to simplify and automate border checks for certain categories of travellers, such as businesspeople. In view of doubts surrounding the Commission’s initial costing of the Smart Borders package, question marks over the technical feasibility of the system and misgivings over the projected benefits, the Commission decided to commission a further technical study, completed in October 2014. A series of practical and operational tests followed in 2015, under the auspices of eu-LISA. In April 2016 the Commission tabled a fresh proposal, this time for the EES alone.

Though the new EES pursues the same central aim of speeding up, facilitating and reinforcing border check procedures for third-country travellers, it nonetheless has some significant changes compared with the 2013 proposal. Firstly, it reduces the amount of data (e.g. fingerprints) to be collected and stored, and proposes a substantial reduction in costs from an initial EUR 1.1 billion to EUR 408 million. Furthermore, under the Commission proposal there would be interoperability between the Visa Information System (see above) and the EES, and law enforcement bodies would have access under certain conditions. The new proposal is currently being considered by Parliament and the Council.

In addition, in November 2016 the Commission presented a legislative proposal for the establishment of a European Travel Information and Authorisation System (ETIAS). Creation of a system with similar objectives to the well-known US ‘ESTA’ system would provide an additional layer of control over visa-exempt travellers. ETIAS would determine the eligibility of all visa-exempt third-country nationals to travel to the Schengen Area, and whether such travel poses a security or migration risk. Information on travellers would be gathered prior to their trip.

**ROLE OF THE EUROPEAN PARLIAMENT**

The European Parliament has had mixed reactions to the development of external border management policy. It has broadly supported the upgraded organisational role of EBCG, as well as of the other relevant Union agencies, often calling for their role to be further enhanced as the EU grapples with the migration crisis in the Mediterranean. In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, Parliament acknowledged the role of Frontex in rescuing and saving lives in the Mediterranean. Moreover, as regards the ‘hotspot’ approach, it recalled that this requires EBCG, EASO, Europol and Eurojust to provide operational assistance to Member States, and pointed out that the agencies require the resources necessary to allow them to fulfil their assigned tasks.

While Parliament’s view of EBCG’s development has been largely positive, its stance on smart borders has been far warier. After the 2013 Commission proposal, it voiced misgivings over the vast technological build-up and the mass processing of personal data proposed for the external borders. Moreover, the anticipated costs of the Smart Borders technology, coupled with doubts surrounding its benefits, left Parliament with a number of concerns. Indeed, in its 12 September 2013 resolution on the second report on the implementation of the Internal Security Strategy, Parliament asserted that ‘new IT systems in the area of migration and border management, such as the Smart Borders initiatives, should be carefully analysed, especially in the light of the principles
of necessity and proportionality’. More recently, it followed this up with an oral question to the Commission and the Council in September 2015, asking for their stance on law enforcement access to the system and their views on the relevance of the European Court of Justice ruling of April 2014 on the Data Retention Directive (see 5.12.8). It remains to be seen how Parliament responds to the revised proposals.

Kristiina Milt
01/2017
THE EUROPEAN UNION AT A GLANCE

The aim of the Fact Sheets is to provide an overview of European integration and of the European Parliament’s contribution to that process.

Created in 1979 for Parliament’s first direct elections, the Fact Sheets are intended to provide non-specialists with a straightforward and concise – but also accurate – overview of the European Union's institutions and policies, and of the role that Parliament plays in their development.

The Fact Sheets are grouped into six chapters:

- **How the European Union works**, which addresses the EU’s historical development, legal system, institutions and bodies, decision-making procedures and financing;
- **Citizens’ Europe**, which describes individual and collective rights;
- **The internal market**, which explains the principles and implementation of the internal market;
- **Economic and Monetary Union**, which outlines the context of EMU and explains the coordination and surveillance of economic policies;
- **Sectoral policies**, which describes how the EU addresses its various internal policies;
- **The EU’s external relations**, which covers foreign policy, security and defence, trade, development, human rights and democracy, enlargement and relations beyond the EU’s neighbourhood.

Drafted by the Policy Departments and the Economic Governance Support Unit, the Fact Sheets are reviewed and updated at regular intervals throughout the year, as soon as Parliament adopts any important positions or policies.


The Fact Sheets are updated regularly and published on the website of the European Parliament in 23 languages.