



Migration and Asylum: a challenge for Europe

PE 600.414



- 1. Asylum Policy..... 3
- 2. Immigration policy..... 10
- 3. Management of the external borders..... 16



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1 - ASYLUM POLICY - [4.2.2.]

The aim of the EU's asylum policy is to offer appropriate status to any third country national requiring international protection in one of the Member States and ensure compliance with the principle of non-refoulement. To this end, the Union is striving to develop a Common European Asylum System.

LEGAL BASIS

- Articles 67(2) , 78 and 80 of the Treaty on the Functioning of the European Union (TFEU);
- 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 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 Geneva Convention of 28 July 1951 and the Protocol thereto of 31 January 1967. 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.

ACHIEVEMENTS

A. Advances under the Treaties of Amsterdam and Nice

Under the 1993 Treaty of Maastricht, the previous intergovernmental cooperation on asylum was brought into the EU's institutional framework. As the main actor, the Council was to associate the Commission to its work and inform Parliament about its asylum initiatives; the European Court of Justice had no jurisdiction on asylum matters.

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: a five-year transitional period with a shared right of initiative between the Commission and Member States and decision by unanimity in the Council after consultation with Parliament; the Court of Justice also gained jurisdiction in specific instances. The Treaty of Amsterdam also provided that, after this initial phase, the Council might decide that the normal co-decision procedure should apply and that it should henceforth adopt its decisions by qualified majority. The Council took a decision to that effect at the end of 2004 and the co-decision procedure has applied since 2005.

The Treaty of Amsterdam envisaged 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).

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: the adoption of common minimum standards in the short term should lead to a common procedure and a uniform status for those who are granted asylum valid throughout the Union in the longer term.

This resulted in the so-called 'first phase' of the Common European Asylum System (CEAS) from 1999-2004, establishing the criteria and mechanisms for determining the Member State responsible for examining asylum applications (replacing the international/intergovernmental 1990 Dublin Convention), including establishing the 'Eurodac' database for storing and comparing fingerprint data; defining common minimum standards to which Member States were to adhere in connection with the reception of asylum-seekers; qualification for international protection and the nature of the protection granted; and procedures for granting and withdrawing refugee status. Further legislation covered temporary protection in the event of a mass influx.

In November 2004, the Hague Programme called for the second-phase instruments and measures to be adopted by the end of 2010, highlighting the EU's ambition to go beyond minimum standards and develop a single asylum procedure comprising common guarantees and a uniform status for those granted protection. In the 2008 European Pact on Immigration and Asylum this deadline was postponed to 2012.

B. The Treaty of Lisbon

The Treaty of Lisbon, which entered into force in December 2009, changed the situation by transforming the measures on asylum from establishing minimum standards into creating 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.

Since the Treaty of Lisbon, Article 80 of the TFEU also explicitly provides for the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States. 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.

In addition, the arrangements for judicial oversight by the Court of Justice of the European Union (CJEU) 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 has enabled the CJEU to develop a larger body of case law in the field of asylum.

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 (EASO).

Although the Commission had tabled its proposals for the second phase of CEAS as early as 2008-2009, negotiations progressed slowly. Accordingly, the ‘second’ phase of the CEAS was adopted following the entry into force of the Lisbon Treaty, with a change of emphasis from minimum standards to a common asylum procedure on the basis of a uniform protection status.

C. The main existing legal instruments and current reform efforts

Except for the recast [Qualification Directive](#), which entered into force in January 2012, the other recast legislative acts only entered into force in July 2013 (the [Eurodac Regulation](#); the [Dublin III Regulation](#); the [Reception Conditions Directive](#); and the [Asylum Procedures Directive](#)), which meant that their delayed transposition in mid-July 2015 fell at the peak of the migration crisis. In June 2014, the European Council defined the [strategic guidelines](#) for legislative and operational planning within the area of freedom, security and justice (Article 68 of the TFEU) for the coming years based on the March 2014 [Commission Communication](#), and building on the progress achieved by the Stockholm Programme. These guidelines stress that the full transposition and effective implementation of the CEAS is an absolute priority.

In view of the migratory pressure since 2014, the Commission issued the [European Agenda on Migration](#) in May 2015 (4.2.3.), which proposed several measures to address this pressure, including the Hotspot approach, set up between the EASO, the European Border and Coast Guard Agency (formerly Frontex) and Europol, which works on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants. The hotspot approach is also meant to contribute to the implementation of the emergency relocation mechanisms for a total of 160 000 people in need of international protection, which were proposed by the Commission to assist Italy and Greece and adopted by the Council on [14 September](#) and [22 September 2015](#), after consultation with Parliament. The Council decision was later maintained in court in the CJEU [Judgment](#) of 6 September 2017. Relocation is meant as a mechanism to implement in practice the principle of solidarity and fair sharing of responsibility set out in Article 80 of the TFEU. However, relocation rates have been [lower than expected](#) and relocations have been implemented slowly.

The European Agenda on Migration also sets out further steps towards a reform of the CEAS, which were presented in two packages of legislative proposals in May and July 2016 and are currently being discussed between Parliament and the Council. The set of legislative initiatives is 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 need to be implemented in national law), and covers:

- Measures to simplify, clarify and shorten [asylum procedures](#), ensure common guarantees for asylum seekers and ensure stricter rules to combat abuse,

including a common list of safe countries of origin, which was originally proposed as a [separate regulation](#);

- Who can qualify for international protection (the so-called ‘[Qualification Directive](#)’), to achieve greater convergence of recognition rates and forms of protection, including more restrictive provisions sanctioning applicants’ secondary movements and compulsory status reviews even for recognised refugees;
- [Reception conditions](#), the most contentious points of which are the waiting period before applicants for international protection have access to the labour market and the Commission’s punitive approach in preventing applicants from moving on to a Member State not competent to treat their asylum claim;
- Reform of the [Dublin Regulation](#), which lays down criteria for determining the Member State responsible for examining an application for international protection (in principle the first country of entry). The proposal preserves the current criteria in the Dublin system, while supplementing them with a corrective allocation mechanism to relieve Member States under disproportionate pressure; thus the [September 2015 Commission proposal](#) for a regulation on a permanent crisis relocation mechanism under the Dublin system is currently on hold in the Council. Similarly the earlier [proposal to change the Dublin regulation](#) on the provision concerning the competent Member State for examining the application for international protection of unaccompanied minors who have no relatives on the territory of the Member States has been withdrawn and its content is included in the current Dublin III proposal;
- A revision of the [Eurodac asylum fingerprint database](#), extending it to cover personal data on third-country nationals who do not apply for international protection but have been found staying irregularly in the EU, allowing law enforcement to access the database, and fingerprinting children from the age of six to facilitate tracking and family reunification;
- Transforming the EASO from a supporting EU agency into a fully-fledged [EU Agency for Asylum](#), which would be responsible for facilitating the functioning of the CEAS, ensuring convergence in the assessment of asylum applications across the EU and monitoring the operational and technical application of Union law, including assisting Member States with the training of national experts;
- A [Union Resettlement Framework](#), which would provide for common EU rules on the admission of third-country nationals, including financial support for Member States’ resettlement efforts, thus complementing the current ad hoc multilateral and national resettlement programmes.

The [2001 Directive on minimum standards for giving temporary protection](#) in the event of a mass influx of displaced persons is still in force but has never been applied so far, not even during the peak of the migration crisis, most probably due to the vagueness of its terms and tensions between the Member States in the Council over burden-sharing.

D. The external dimension

Adopted in 2011 by the Commission, the [Global Approach to Migration and Mobility \(GAMM\)](#) is the overarching framework of the EU’s external migration and asylum policy, defining how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities and embedded in the EU’s overall external

action, including development cooperation. Its main objectives are to better organise legal migration, to prevent and combat illegal migration, to maximise the development impact of migration and mobility and to promote international protection.

The European Council and Turkey reached an agreement in March 2016 aimed at reducing the flow of irregular migrants via Turkey to Europe. According to the [EU-Turkey Statement](#), all new irregular migrants and asylum seekers arriving from Turkey to the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Turkey. And for each Syrian returned to Turkey, another Syrian should be resettled in the EU, in exchange for further visa liberalisation for Turkish citizens and the payment of EUR 6 billion under the Facility for Refugees in Turkey, until the end of 2018. According to the Commission's [Seventh Report on the Progress made in the implementation of the EU-Turkey Statement](#) of September 2017, the Statement has continued to play a key role in ensuring that the migration challenge in the Eastern Mediterranean is addressed effectively. However, the Report stresses that shortcomings persist: in particular, the pace of returns from the Greek islands to Turkey has slowed down and the number of returns remains much lower than the number of arrivals, thus adding to the pressure on hotspot facilities on the islands.

On a global level, in September 2016 the United Nations General Assembly unanimously adopted the [New York Declaration for Refugees and Migrants](#), a landmark political declaration that is directed at improving the way in which the international community responds to large movements of refugees and migrants, as well as to protracted refugee situations. As a result, two global compacts are to be adopted in 2018, for refugees and for other migrants. The New York Declaration sets out a Comprehensive Refugee Response Framework (CRRF), with specific actions needed to ease pressure on host countries, enhance refugee self-reliance, expand access to third-country solutions and support conditions in countries of origin for return in safety and dignity. As part of the follow-up to the 2016 New York Declaration, the High Commissioner for Refugees will propose a 'Global Compact on Refugees' in his annual report to the General Assembly in 2018.

In its [April 2018 plenary session](#), Parliament held that the EU and its Member States must take a leading role in the ongoing talks at global level with a view to agreeing the two compacts, especially in view of the US decision to withdraw from the negotiations.

E. Funding available for asylum policies

The main funding instrument in the EU budget in the area of asylum is the Asylum, Migration and Integration Fund (AMIF), with an allocation for 2014-2020 recently increased from EUR 3.31 billion to EUR 6.6 billion. AMIF is intended to promote the implementation, strengthening and development of a common Union approach to asylum and immigration. Other EU funding instruments like the European Social Fund (ESF, [2.3.2](#)), the Fund for European Aid to the Most Deprived (FEAD, [2.3.9](#)) and the European Regional Development Fund (ERDF, [3.1.2](#)) also allocate funds, mostly to support the integration of refugees and migrants, although the share of funds allotted to them is not accounted for separately in the budget lines and thus is not clear.

Similarly, the initial 2014-2020 allocation to the EASO has increased from EUR 109 billion to EUR 456 billion.

Outside the MFF but inside the EU budget, there are trust funds for external measures, like the EU Emergency Trust Fund for Africa (EUR 1.8 billion) to assist countries in Africa in migration management and border control, the EU Regional Trust Fund in

response to the Syrian crisis (EUR 500 million) and the Refugee Facility for Turkey (see above, so far EUR 3 billion).

Finally, outside the EU budget, the European Development Fund (EDF, EUR 30.5 billion, of which a EUR 2.2 billion contribution has gone to the EU Emergency Trust Fund for Africa) focuses on poverty eradication and achieving the 2030 Agenda for Sustainable Development, but has increasingly been used to finance the response to migration issues in recent years.

ROLE OF THE EUROPEAN PARLIAMENT

The [resolution of 12 April 2016](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration provides an overview of Parliament's main positions and concerns in the field of asylum.

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 been calling on the Member States to make use of existing possibilities to provide humanitarian visas, and takes the view that persons seeking international protection should be able to apply at any consulate or embassy for a European humanitarian visa, therefore calling for an amendment to the Union Visa Code.

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 noted the importance of mutual recognition by Member States not only of negative, but also of positive asylum decisions.

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 creation of the European Asylum Support Office.

As regards relations with third countries, under the [Global Approach to Migration and Mobility](#), Parliament called for the stepping up of capacity-building efforts and resettlement activities, which should be carried out together with third countries hosting large refugee populations. Parliament took the view that cooperation with third countries must focus on tackling the root causes of irregular flows to Europe.

Parliament can also bring an action for annulment before the Court of Justice. This instrument was successfully used in the [CJEU's judgement of 6 May 2008](#) 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 Council Directive 2005/85/EC.

Read more on this topic:

- [Migration in Europe](#)
- [Migrant crisis in Europe](#)

— [EU immigration policy](#)

Marion Schmid-Drüner
05/2018

2 - IMMIGRATION POLICY - [4.2.3.]

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 managing 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, including trafficking and smuggling, 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 for the area of freedom, security and justice (AFSJ), adopted in December 2009 as a successor to the multiannual programmes adopted at Tampere (1999) and The Hague (2004), expired in December 2014 ([4.2.1](#)). In March 2014, the Commission published a new communication setting out its vision on the future agenda for the AFSJ, 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 2014-2020 period. 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 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 [4.2.2](#)), 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 (which was launched soon afterwards as [EUNAVFOR MED – Operation Sophia](#)).

On the basis of this agenda, on 6 April 2016 the Commission published its guidelines on regular migration, as well as on asylum, in a [communication](#). 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, with a view to ensuring legal pathways to the EU while at the same time improving returns of those who have no right to stay.

In March 2018, the Commission published a [progress report](#) on the implementation of the European Agenda on Migration, which examines progress made and shortcomings in the implementation of the Agenda.

C. Recent legislative developments

Since 2008, a number of significant directives on immigration have been adopted and several have already been revised. The Commission is currently carrying out a [fitness check](#) (REFIT evaluation) to evaluate and assess the existing EU legislation on legal migration; the first results should be published in mid-2018.

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 and identified several shortcomings. In June 2016, the Commission proposed a revision of the system, including less stringent admissions criteria, a lower salary threshold/minimum length of the work contract required, better family reunification provisions, and the abolition of parallel national schemes; 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 directive makes 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.

Lastly, the status of third-country nationals who are long-term residents in the European Union is still regulated by Council Directive [2003/109/EC](#), as amended in 2011 to extend its scope to refugees and other beneficiaries of international protection. Current work on the [Qualifications Directive \(4.2.2.\)](#) and the [Blue Card Directive](#) include proposed amendments to the Directive on long-term residents.

2. Integration

Council [Directive 2003/86/EC](#) sets out provisions on the right to family reunification. Since the 2008 implementation report concluded that it was not 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. 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. Existing instruments include the European Migration Forum (formerly the European Integration Forum); the [Website on Integration](#); and the [European Integration Network](#) (until 2016 the Network of National Contact Points on Integration).

3. Irregular immigration

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

- The so-called 'Facilitators Package' comprises Council [Directive 2002/90/EC](#), setting out a common definition of the crime of facilitating unauthorised entry, transit and residence, and [Framework Decision 2002/946/JHA](#), establishing criminal sanctions for this conduct. Trafficking is addressed by [Directive 2011/36/EU](#) on preventing and combating trafficking in human beings and protecting its victims. The package is complemented by Council [Directive 2004/81/EC](#), providing for the granting of a residence permit to trafficked or smuggled persons who cooperate with the competent authorities (on trafficking, see also fact sheet on 'Judicial cooperation in criminal matters' [4.2.6](#)). In May 2015, the Commission adopted the [EU Action Plan against migrant smuggling \(2015-2020\)](#), and, in line with the Action Plan, the Commission conducted a [REFIT evaluation](#) on the application of the existing legal framework, which was preceded by a [public consultation](#). The Commission found that, at that point in time, there was not

sufficient evidence pointing to actual and repeated prosecution of individuals or organisations for humanitarian assistance, and concluded that the EU legal framework addressing migrant smuggling remains necessary in the current context. It further found that a review of the Facilitators Package would not bring more added value than its effective and full implementation, while a general agreement emerged that non-legislative measures to support Member States' authorities, civil society organisations or other stakeholders, including enhanced cooperation with third countries, could bring added value.

- The '[Returns 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. In September 2015, the Commission published the [EU action plan on return](#), which was followed by the adoption, in October 2015, of the Council conclusions on the future of the return policy. In March 2017, the Commission supplemented the Action Plan with a [communication](#) on 'a more effective return policy in the European Union – a renewed action plan' and a [recommendation](#) on making returns more effective. In September 2017, it published its updated '[Return Handbook](#)', providing guidance relating to the performance of duties of national authorities competent for carrying out return-related tasks. Additionally, in 2016, Parliament and the Council adopted [Regulation \(EU\) 2016/1953](#) on the establishment of a European travel document for the return of illegally staying third-country nationals.
- [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. The so-called Joint Readmissions Committees monitor their implementation. These agreements are linked to visa facilitation agreements, which aim to provide the necessary incentive for readmission negotiations in the third country concerned without increasing irregular migration.

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.

Parliament has adopted numerous own-initiative resolutions addressing migration, in particular its [resolution of 12 April 2016](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration, which assesses the various policies at stake, and develops a set of recommendations. The LIBE report voted in plenary was accompanied by the opinions of eight other committees of Parliament. The resolution encompasses Parliament's position on all relevant EU policies on migration and asylum and is Parliament's point of reference in this area.

Read more on this topic:

- [Migration in Europe](#)
- [Migrant crisis in Europe](#)

— [EU Asylum policy](#)

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05/2018

3 - MANAGEMENT OF THE EXTERNAL BORDERS - [4.2.4.]

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.

LEGAL BASIS

Articles 67 and 77 of the Treaty on the Functioning of the European Union (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 an international treaty, the so-called Schengen Agreement, near the Luxembourgish border town of Schengen, which was supplemented five years later by the Convention implementing the Schengen Agreement^[1]. The Schengen Area, the borderless zone created by the Schengen *acquis* (as the agreements and rules are collectively known), currently comprises 26 European countries.

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 (1.1.3), 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 2014–2020 financial period, this burden-sharing mechanism is known as 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

[1]The Schengen *acquis* — Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 19.

database for identifying asylum seekers and ensuring the proper implementation of the Dublin Regulation (for more details on Eurodac and the Dublin Regulation, see [4.2.2](#)). Fourthly, there is a set of measures (known as the Facilitators Package^[2]) 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 (Frontex).

1. The Schengen Information System (SIS)

The Schengen Information System, which entered its second generation in 2013, 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 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. 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, which is based in Tallinn, Estonia. As of 31 December 2016, there had been a total of 70.8 million alerts. The largest number of alerts concern lost or stolen documents (over 39 million) and stolen vehicles (around 5 million).

2. The Visa Information System (VIS)

The aim of the Visa Information System is to improve implementation of the common visa policy, consular cooperation and consultations between the central visa authorities. In 2014, the VIS processed approximately 8.5 million visas. It actually comprises two separate systems: the VIS central database and an Automated Fingerprint Identification System (AFIS), and 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. The purpose of the database is to identify any individuals who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States. Law enforcement authorities, Europol and, under specific circumstances, third countries and international organisations have access to the system. The use of VIS for asylum and law enforcement purposes is still fragmented across the Member States, while data quality problems can mostly be attributed to sub-optimal application of the database.

3. The European Border and Coast Guard Agency (Frontex)

Headquartered in Warsaw, the main role of the European Border and Coast Guard Agency (EBCG), also referred to as Frontex^[3], is to help provide integrated border management at the external borders (EIBM), a concept which is described as a

[2]See Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA.

[3]Regulation (EU) 2016/1624 of 14 September 2016, OJ L 251, 16.9.2016, p. 1.

fundamental component of the Area of Freedom, Security and Justice ([4.2.1](#)). By law, the EBCG is now entrusted with an enhanced operational mandate which touches upon all the main components of EIBM, by building on Frontex's operational tasks in border control and surveillance to ensure the effective management of migration flows, including the power to implement joint return flights, and to provide a high level of security for the EU. At the same time, it helps safeguard free movement within the EU, but is obliged to abide fully by fundamental rights. The EBCG is authorised to work both with national authorities within the EU and in cooperation with non-EU countries. Furthermore, it can carry out joint operations on the territory of, and in collaboration with, third countries which neighbour at least one EU Member State.

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

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 since September 2015. Prior to the outbreak of the European humanitarian refugee crisis, only three countries had resorted to erecting fences at external borders to prevent migrants and refugees from reaching their territories: Spain (where building work was completed in 2005 and extended in 2009), Greece (completed in 2012) and Bulgaria (in response to Greece, completed in 2014). Contrary to Article 14(2) of the Schengen Borders Code, which stipulates that 'entry may only be refused by a substantiated decision stating the precise reasons for the refusal', an increasing number of Member States have gradually embarked on the construction of border walls or fences with the aim of indiscriminately preventing migrants and asylum seekers from accessing their national territories. Moreover, without explicit EU rules on the erection of fences at external Schengen borders, Member States have also put up barriers with third countries (notably Morocco and Russia), including pre-accession candidates (the former Yugoslav Republic of Macedonia, Serbia and Turkey) and one EU Schengen candidate country — Croatia. Fences have also been constructed within the Schengen area, such as the fence between Austria and Slovenia, while Spanish practices in Melilla have come under scrutiny from the European Court of Human Rights in Strasbourg.

Under the EIBM, the internal and external dimensions of EU border surveillance measures are becoming increasingly intertwined. This trend is reflected in the increasingly prominent contribution of defence actors to the development of integrated border management, in terms of both direct operational interventions (executive functions) and support provided to third countries in the field of border management (training, mentoring, and monitoring functions), while a key element of the common security and defence policy (CSDP) — EUNAVFOR MED, or **Operation Sophia** — is just one example of the operational involvement of Member States' navies in the implementation of the EIBM. The original mandate of the military players participating in this operation was to fight against smugglers. However, the scope of the mission was recently expanded and now formally involves IBM-related functions, and in particular surveillance activities, search and rescue operations at sea and information exchange with Member States' law enforcement agencies, as well as with the EBCG and Europol.

The 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 [4.2.2](#)), Europol (see [4.2.7](#)) and Frontex — 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. 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.

The other key development in border policy centres on the ‘Smart Borders’ package, which is designed to modernise border management by automating border checks and enhancing exit and entry information, and to plug any information gaps left by the EU’s three large-scale databases (SIS, VIS and Eurodac) in two areas relating to the management of external borders: cutting down irregular migration overstays and fighting terrorism and serious crime.

The main shortcomings that the revised version of the Package proposed by the Commission in 2016 will address include: the inadequate quality and speed of border controls involving third-country nationals, the fact that under the current system it is impossible to ensure systematic and reliable monitoring of third-country nationals’ stay in the Schengen area, and difficulties identifying third-country nationals should they decide to destroy their official documentation after entering the Schengen area.

But the 2016 version of EU Smart Borders is not only limited to border management objectives, such as reducing waiting time at border controls, improving the quality of identity checks, and amassing more accurate information on ‘overstayers’, it now also serves a new purpose: law enforcement access and utilising travellers’ data gathered during border controls. With a view to achieving these objectives, an Entry/Exit System (EES) and corresponding amendment of the Schengen Border Code was recently adopted^[4]. The regulation in question establishes a legal framework and the technical infrastructure for the automatic data collection and systematic recording of the external border-crossing movements of all third-country nationals (both visa-required and visa-exempt) visiting the Schengen area for a short stay (a maximum 90-day period in any period of 180 days), and for tracking the time spent by each third country national during his/her stay in the Schengen area. The EES is designed to calculate the length of stay of each and every third-country national by recording entry and exit information, and to raise an alert if it detects an overstay.

According to the regulation, the new centralised EU database is due to become operational in 2020. eu-LISA, in cooperation with the Member States, has been entrusted with the task of building the EES.

In addition, in November 2016 the Commission presented a legislative proposal for the establishment of a European Travel Information and Authorisation System (ETIAS).

[4]Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

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.

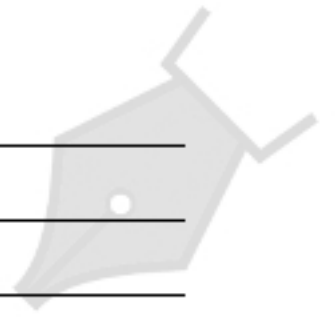
ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has had mixed reactions to the development of external border management policy. It has broadly supported the upgraded organisational role of Frontex, 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. While Parliament's view of Frontex'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'. 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 Court of Justice of the European Union ruling of April 2014 on the Data Retention Directive (see [4.2.8](#)). It remains to be seen how Parliament responds to the revised proposals. If no swift progress is made on the proposed reform of the Dublin III regulation^[5], Parliament could freeze ongoing negotiations on all files which are of interest to justice and home affairs ministries, such as the recent interoperability proposal, the revision of the Eurodac system and other relevant files^[6]. It had already successfully adopted this approach in 2012 with the so-called 'Schengen freeze', when it decided to cease cooperation on the main JHA dossiers under negotiation in response to the Council's decision to change the legal basis for the Schengen Governance Package.

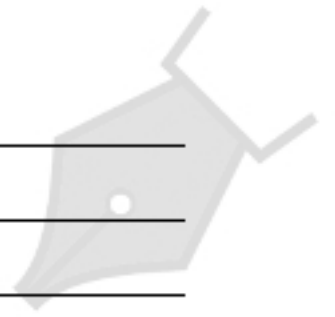
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[5]Proposal for a regulation of the European Parliament and of the Council of 4 May 2016 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

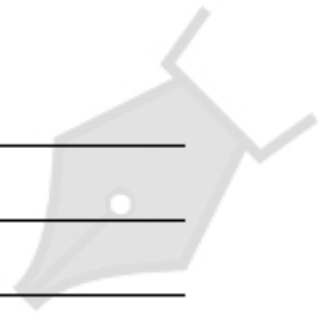
[6]European Parliament draft legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).



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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 designed to provide non-specialists with a straightforward, concise and accurate overview of the European Union's institutions and policies, and the role that the European Parliament plays in their development.

The Fact Sheets are grouped into five chapters.

- **How the European Union works** addresses the EU's historical development and the successive treaties, its legal system, decision-making procedures, institutions and bodies, and financing.
- **Economy, science and quality of life** explains the principles of the internal market and consumer protection and public health, describes a number of EU policies such as social, employment, industrial, research, energy and environment policies, outlines the context of the economic and monetary union (EMU) and explains how competition, taxation and economic policies are coordinated and scrutinised.
- **Cohesion, growth and jobs** explains how the EU addresses its various internal policies: regional and cohesion policy, agriculture and fisheries, transport and tourism, and culture, education and sport.
- **Citizens: fundamental rights, security and justice** describes individual and collective rights, including the Charter of Fundamental Rights, and freedom, security and justice, including immigration and asylum, and judicial cooperation.
- **The EU's external relations** covers foreign policy, security and defence policies, external trade relations, and development policy; the promotion of human rights and democracy; the enlargement and relations beyond the EU's neighbourhood.

Drafted by the policy departments and the Economic Governance Support Unit, the Fact Sheets are available in 23 languages. The online version is reviewed and updated at regular intervals throughout the year, as soon as Parliament adopts any important positions or policies.

