Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa
Europski parlament Parlamento europeo Eiropas Parlaments Europos Parlamentas Európai Parlament
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

ASYLUM POLICY

> 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 EU aims 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 relating to the Status of Refugees 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 Court of Justice of the European Union (CJEU) 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 the Member States and decision by unanimity in the Council after consultation with Parliament; the CJEU also gained jurisdiction in specific instances. The Treaty of Amsterdam also provided that, after this initial five-year phase, the Council could 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 (now known as the ordinary legislative procedure) has applied since 2005.

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 '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 European Asylum Dactyloscopy Database (Eurodac) for storing and comparing fingerprint data. It also defines common minimum standards to which Member States were to adhere in connection with the reception of asylum seekers, determined qualifications for international protection and the nature of the protection granted, and established 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 any financial burdens, between Member States. EU actions concerning asylum should, if necessary, contain appropriate measures to ensure this principle is realised. 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 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 the 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 (see 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 the European Union Agency for Law Enforcement Cooperation (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. The mechanisms were proposed by the Commission to assist Italy and Greece and adopted by the Council on 14 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, *inter alia,* the CEAS 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. On 25 April 2018, Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) adopted its report — which serves as a negotiating mandate.

— Who can qualify for international protection (see the 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; Parliament's LIBE Committee adopted its report on 15 June 2017. In mid-2018, Parliament and the Council reached a provisional agreement; however, the agreement did not receive sufficient support from the Member States[1].

— 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; Parliament's LIBE Committee adopted its report on the proposal on 25 April 2017. On 17 May 2018, the plenary gave the report the green light to serve as a mandate for entering into interinstitutional negotiations. In mid-2018, Parliament and the Council reached a provisional agreement. However, negotiations between Parliament the Council are still ongoing.

— 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; Parliament's LIBE Committee adopted its report on 19 October 2017, which plenary confirmed as the mandate for entering into interinstitutional negotiations.

---

[1]https://www.consilium.europa.eu/media/37402/st15252-en18.pdf

— A revision of the [Eurodac asylum fingerprint database](#), extending it to cover personal data on third-country nationals who have not applied for international protection and 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. Parliament's LIBE Committee was given the green light by the plenary to start interinstitutional negotiations on the basis of its [report](#) of 30 May 2017 on the proposal. Negotiations with the Council started in September 2017 and Parliament and the Council reached a partial provisional agreement in June 2018.

— Transforming the EASO from a supporting EU agency into a fully-fledged [EU Agency for Asylum](#) (EUAA), 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. Parliament adopted its [report](#) on the proposal on 8 December 2016, and in mid-June 2017, a broad provisional agreement with the Council was found. In September 2018, the Commission presented a [modified proposal](#) for reinforcing the EUAA with more staff, tools and financial means, to ensure that Member States can rely on full EU operational support at all times.

— 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. Parliament's LIBE Committee adopted its [report](#) on the proposal on 12 October 2017 and was given the mandate to negotiate with the Council.

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. It defines how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities. It is embedded in the EU's overall external action and includes 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 into Europe via Turkey. 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 [Progress report on the Implementation of the European Agenda on Migration](#) of May 2018, the Statement has continued to play a key role in ensuring that the challenge of migration in the Eastern Mediterranean is addressed effectively. However, the report stresses that shortcomings persist: in particular, the slow pace of examination of asylum applications in Greece continues to hold back returns to Turkey.

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 that allow refugees to 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 the 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). The AMIF's allocation for 2014-2020 was increased from EUR 3.31 billion to EUR 6.6 billion. For the next long-term EU budget for the 2021-2027 period, the Commission proposes to increase funding again under the new Asylum and Migration Fund (AMF) by 51% to EUR 10.4 billion to, *inter alia*, strengthen and develop all aspects of the CEAS, including its external dimension. Other EU funding instruments such as 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 (the future EU Asylum Agency (EUAA)) has increased from EUR 109 million to EUR 456 million. In order to be ready to provide full operational support for asylum procedures in the future, the Commission has proposed a budget of EUR 1.25 billion for the 2021-2027 period.

Outside the multiannual financial framework (MFF) — but under the EU budget —are trust funds for external measures, such as 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 (EUR 500 million), set up in response to the Syrian crisis and the Facility for Refugees in Turkey (EUR 3 billion for 2016-2017 and EUR 3 billion for 2018-2019).

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 European Parliament has always strongly advocated a common European asylum system, in accordance with the Union's legal commitments. Parliament has also called for the reduction of illegal migration and for the protection of vulnerable groups.

Parliament's 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. 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 migration flows to Europe.

Parliament can also bring an action for annulment before the CJEU This instrument was successfully used (see the CJEU Judgment 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

Ina Sokolska
05/2019