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# Addressing migration in the European Union

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Selected publications by the  
European Parliamentary  
Research Service

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Compendium of Briefings

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**Members' Research Service**

February 2017



# Addressing migration in the European Union

Compendium of briefings by the  
European Parliamentary Research Service

**EDITOR**

These briefings have been drawn up by the **Members' Research Service** of the European Parliamentary Research Service (EPRS).

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This compendium brings together a number of publications of the Members' Research Service of the European Parliamentary Research Service, in particular several on the legislative proposals put forward by the European Commission to reform the Common European Asylum System.

It has been prepared for the conference on 'Addressing the root causes of migration and the reception of migrants', organised by the European Committee of the Regions, together with the Euro-Mediterranean Regional and Local Assembly and in partnership with the Maltese Presidency of the Council of the EU, on 22 February 2017.

# Introduction

Over the past two years, the migratory pressure on the European Union's external borders has led to dealing with migration becoming its highest priority. After a peak in 2015, the number of irregular entries into the European Union dropped by more than half in the second quarter of 2016, compared with the same period in 2015, mainly as a result of the implementation of the EU-Turkey Statement. However, the number of asylum applications remains high, with more than 1.2 million asylum applications made in the EU Member States in 2016. Nonetheless, the EU and its Member States are adapting to the new reality. The Juncker Commission had already listed the migratory challenge as one of its ten priorities in 2014. Managing migration has also become one of the main concerns of EU citizens: according to Eurobarometer surveys from December 2016, migration continues to be perceived as one of the most important issues the EU needs to address.

The Commission, tasked under the European Agenda on Migration, has proceeded with reform of the Common European Asylum System (CEAS). In 2016, the Commission presented proposals to amend all the CEAS instruments, suggesting to recast the Dublin Regulation, create a European Union Agency for Asylum, reinforce the Eurodac system for fingerprinting migrants, replace the Asylum Procedures Directive and the Qualification Directive with directly applicable regulations, and streamline the Reception Conditions Directive. Moreover, the Commission has set an earlier proposal from 2015, to establish a list of third countries considered 'safe countries of origin', among its pending priorities for 2017. Changes to the existing asylum policy are also intended to replace the temporary emergency relocation and resettlement schemes, agreed in 2016 and due to run until September 2017. All the proposals are currently under discussion in the European Parliament and Council. The co-legislators have the opportunity to draw on the position of the advisory bodies and different stakeholders in their preparatory work, as demonstrated, for example, by the European Parliament's April 2016 resolution on 'The situation in the Mediterranean and the need for a holistic EU approach to migration'.

The reform of the asylum system also needs to be considered in the context of EU relations with third countries. The EU-Turkey statement signed on 18 March 2016, and the new Partnership Framework with third countries endorsed by the European Council on 28 June 2016, both set a course for cooperation based on incentives and conditionality with key countries of origin and transit. The aim is to focus all relevant EU policies on addressing the root causes of migration and also strengthen cooperation on readmission and return.

Part of the EU's approach is strengthening controls at the external borders. The European border and coast guard, created through extending the mandate of Frontex to a supervisory role and building its operational tasks and rights, is set to become fully operational in 2017. One of the objectives for creating a common guard was also to ensure that fundamental rights and transparency safeguards are respected at the borders.

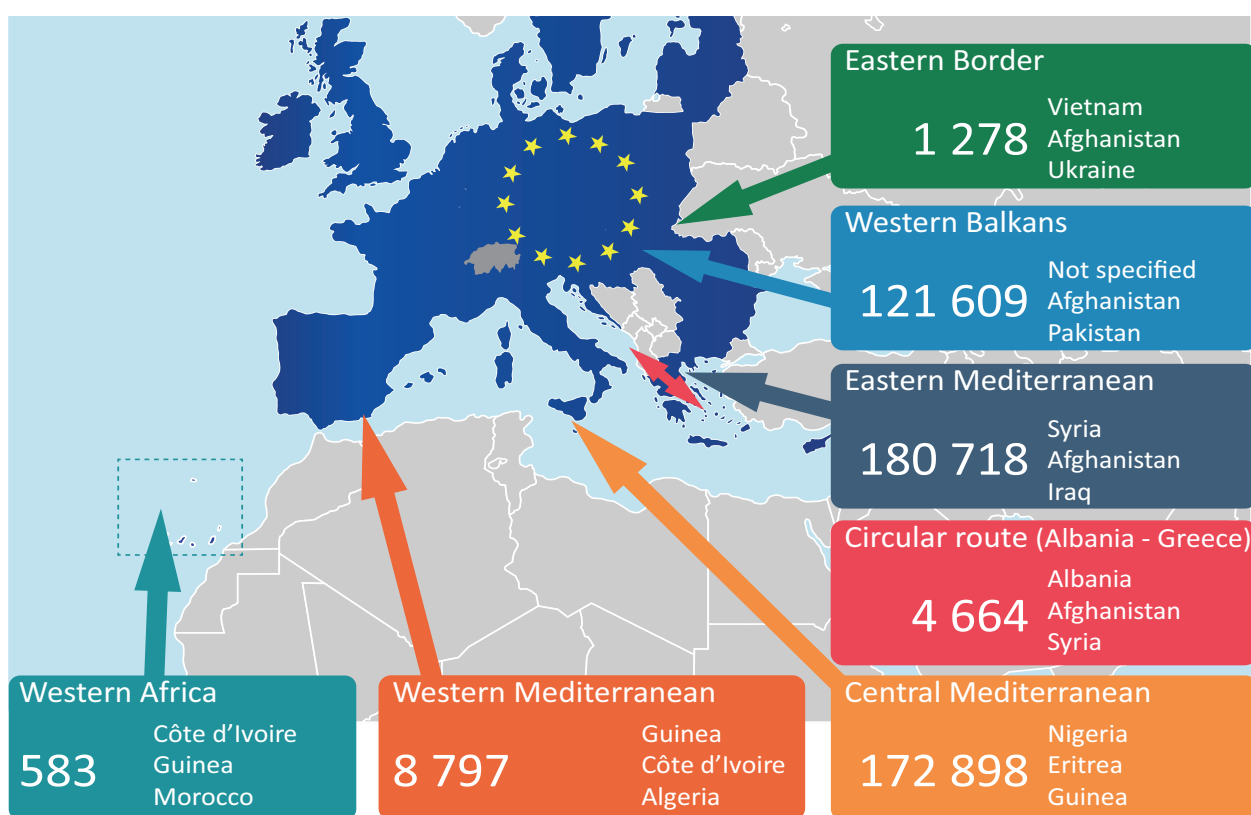
In addition to identifying vulnerable groups, policy-makers and practitioners are also invited to consider the gender dimension of migration, as men and women are exposed to different types of risk and vulnerability during the different stages of migration. Identifying protection gaps is essential to ensure that asylum policy is implemented in accordance with relevant EU legislation as well as international law standards.



## Recent migration flows to the EU

### Detections of illegal border crossings in the EU (January – November 2016)

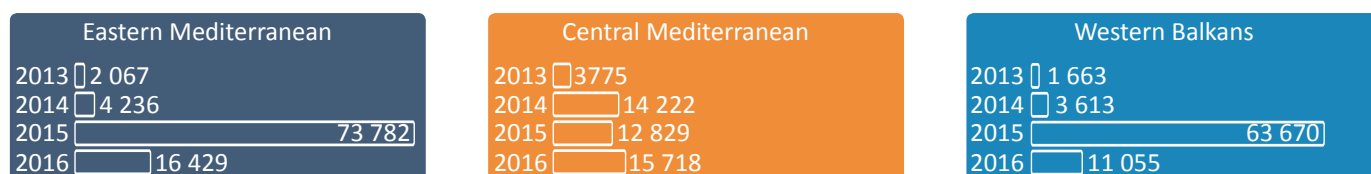
Frontex, the EU border surveillance agency, collects data on detections by national border-control authorities of illegal crossings of the EU's external borders. External borders are those between Member States and third countries, as well as between Schengen Associated Countries (Norway, Iceland and Switzerland) and third countries.



The map shows the routes of illegal entries into the EU during the period January to November 2016. For each route, the box shows the number of entries and the top three nationalities of migrants.

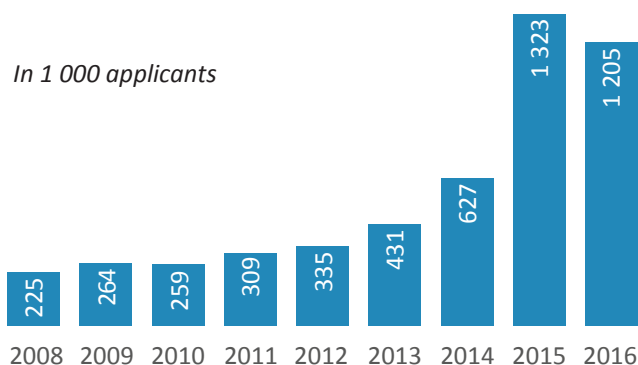
### Monthly average number of detections of illegal border crossings in the EU

The boxes below show the recent changes in numbers on the most frequent routes: Eastern Mediterranean, Central Mediterranean and Western Balkans. The other routes are not shown as the figures do not indicate major changes in the numbers of illegal entries.



## Asylum applicants in the EU-28

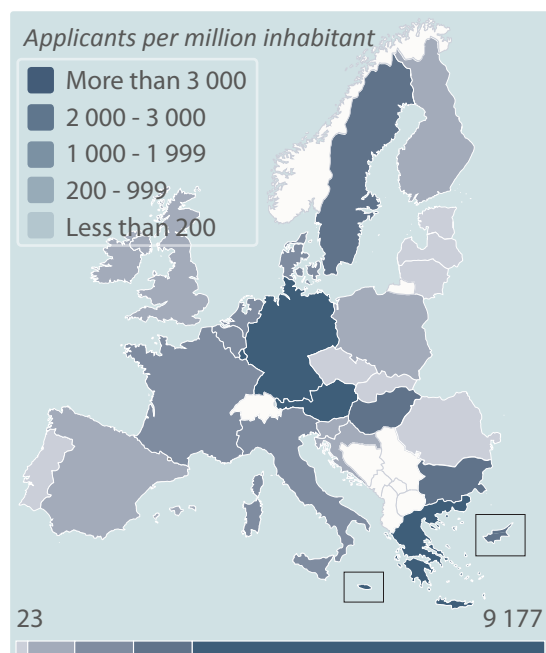
The bar chart shows the number of asylum applicants in the European Union. 'Applicants' refers to anyone applying for asylum or similar protection – as defined in the Qualification Directive – or included in an application as a family member. The table shows the breakdown of those Member States which together represent more than 90% of the total requests for asylum in 2016.



<i>In 1 000 applicants</i>	2012	2013	2014	2015	2016
DE	77	127	203	477	745
IT	17	27	65	84	112
FR	61	66	64	76	76
AT	17	18	28	88	39
EL	10	8	9	13	37
UK	29	31	33	40	35
HU	2	19	43	177	29
SE	44	54	81	162	27
BG	1	7	11	20	19
Others	76	75	90	185	85

The map shows the relative weight of the number of applicants per million inhabitants in the 'country of arrival' (the EU Member State in which asylum has been requested) for the year 2016. The EU average is 2 369 applicants per million inhabitants. The bar below the map shows the range of applicants within the Member States.

The horizontal bar chart shows the top 20 countries of origin for the year 2016. The value in parenthesis represents changes with respect to 2015; a positive value shows an increase, and a negative a decrease (e.g. there was a decrease of 40 000 applicants from Syria in 2016).



Top 20 countries of origin		
Syria	329	(-40)
Afghanistan	182	(1)
Iraq	126	(1)
Pakistan	47	(-1)
Nigeria	44	(13)
Iran	40	(14)
Eritrea	33	(-1)
Albania	30	(-38)
Russia	26	(4)
Somalia	19	(-2)
Bangladesh	16	(-3)
Gambia	15	(3)
Guinea	13	(7)
Serbia	13	(-17)
Ukraine	11	(-11)
Kosovo*	11	(-61)
Morocco	11	(5)
Algeria	11	(2)
Turkey	11	(6)
Côte d'Ivoire	11	(5)

*In 1 000 applicants*

Previous editions of this Infographic were issued in September 2015 ([PE 565.905](#)) and in April 2016 ([PE 580.893](#))

**Notes.** Asylum is a form of international protection given by a state on its territory to someone who is threatened by persecution on grounds of race, religion, nationality, membership of a particular group or political opinion in their country of origin or residence. In the EU, this consists of refugee status as defined in the [UN Geneva Refugee Convention](#), plus subsidiary protection for persons who do not qualify as refugees but in respect of whom substantial grounds exist that the person concerned, if returned to their country of origin, would face a real risk of suffering serious harm as defined in the [Qualification Directive](#).

Not all those who cross the EU's external borders illegally will seek asylum, or indeed qualify under the definition above. They thus form part of the broader category of 'irregular immigrants', i.e. those who do not fulfil, or no longer fulfil, the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.

**Data source:** Frontex and Eurostat January 2017. Data on asylum for 2016 are not fully complete, as some Member States have not yet reported the number of applicants for the month of December 2016. Therefore the final number reported could be higher, once more data become available.

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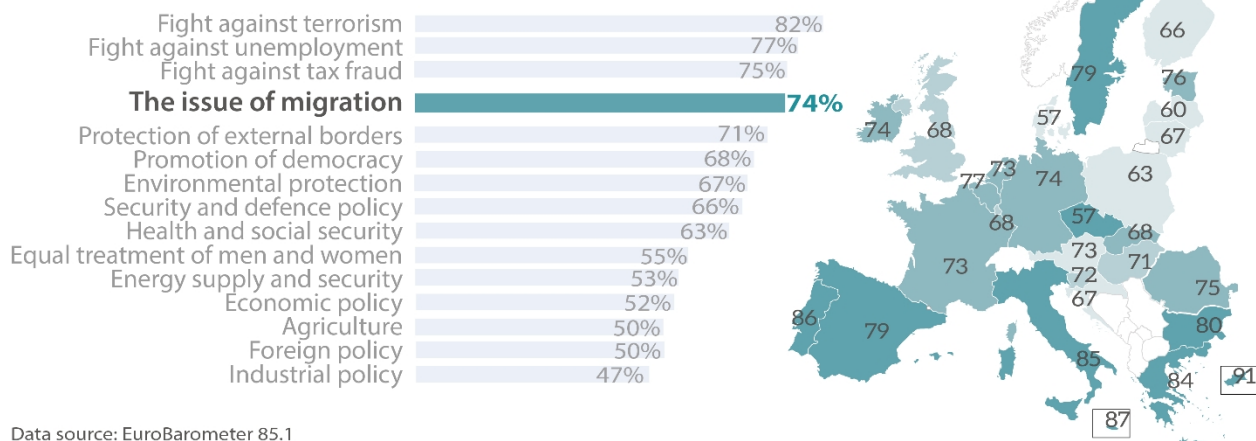
## The issue of migration

### OVERVIEW

Migration and asylum are policy areas with one of the highest levels of public support for more EU involvement, but at the same time citizens do not see it as a priority for the EU budget. Post-Lisbon Treaty, the area is governed by fair sharing of responsibilities and financial implications between Member States. Faced with unprecedented migratory flows, the current migration management system has revealed serious shortcomings that arguably cannot be addressed without more EU support.

### Public expectations and EU commitment on the issue of migration – is there a gap?

Percentage of respondents who would like the EU to intervene more than at present



Data source: EuroBarometer 85.1

Greater EU engagement in the issue of migration is supported by 74% of EU citizens, according to a new Eurobarometer survey of the European Parliament on '[perceptions and expectations](#)'. This makes migration issues one of the policy areas with the highest support for EU involvement. Although this support is unevenly spread across the EU, it always comes from a majority of citizens, and sometimes is almost unanimous. The highest support is in Cyprus (91%), Malta (87%) and Portugal (86%). The lowest is in Denmark (57%). Two thirds of EU citizens evaluate the EU's current involvement in this policy area as insufficient. Citizens' expectations and preferences of EU involvement in the issues of migration are not yet met despite increased attention to this policy area. The strongest support for more EU involvement in migration is from people between 35 and 74 years old.

Despite the strong preference for EU involvement in migration issues, EU citizens do not share very strong preferences for turning this policy area into an EU budget spending priority. Among the most

preferred categories of EU spending, migration issues ranked 11th in [2008](#) and in [2011](#) (with 12% of citizens perceiving it as a top priority). In [2015](#), migration issues moved up to ninth place with 16% of supporters, which almost overlaps with the number of citizens who perceive migration issues to be a current EU budget spending priority, namely 15%.

### Legal framework

Migration and asylum are regulated at EU and national level. At EU level, migration policy has been developed since 1999, with the Amsterdam Treaty facilitating the shift from autonomous national policies to some common minimum standards. In 2009, under the [Stockholm Programme](#) Member States agreed on principles for a common migration and asylum policy which the Lisbon Treaty embedded in a legal framework based on [solidarity](#). Post-Lisbon, migration, as part of Justice and Home Affairs, falls under 'shared competence' between the EU and its Member States. Moreover, both EU and national asylum legislation must be aligned with the international refugee law framework set by the 1951 [Geneva Convention and its Protocol](#), which have been incorporated into EU law under [Article 78\(1\)](#) TFEU.

### Current implementation and EU action

Regarding legal migration, EU measures adopted to date include rules on the entry and residence of highly skilled third-country [workers](#), [students and researchers](#) and [family members](#) of legally resident third-country nationals (TCNs).

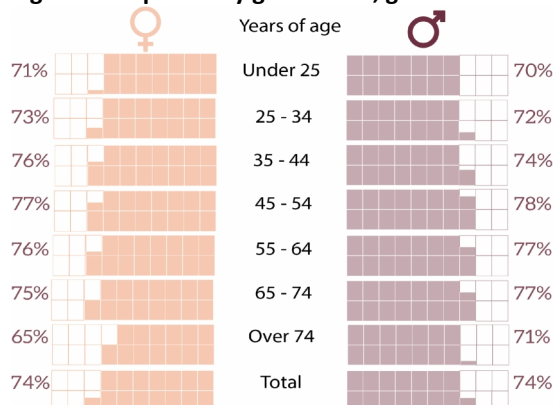
On asylum, common standards came with the creation of the Common European Asylum System (CEAS) on the basis of [Article 78\(2\)a](#) TFEU. The CEAS moved towards greater harmonisation in 2013 with the completion of five key acts: [Qualification Directive](#), [Asylum Procedures Directive](#), [Reception Conditions Directive](#), [Dublin III Regulation](#) and the [Eurodac Regulation](#). Regardless of the potential provided by the Treaties, the CEAS did not create an EU-wide asylum status. The system relies on two main principles: only one Member State is responsible for an asylum application and national asylum standards are harmonised. By default, the first Member State an applicant enters is responsible. During the current mass influx of migrants, the national asylum systems of countries at the EU's external borders became overburdened and as a result, asylum-seekers suffered from [poor conditions](#) and lower [recognition rates](#) in those countries. As a consequence, migrants travelled forward to other EU Member States to apply for asylum, creating a situation where only a [few](#) Member States received 75% of all first time asylum applications, fuelling tensions between Member States and prompting calls for solidarity.

A recent implementation [study](#) observes that while both the EU and Member States recognised the [structural shortcomings](#) of the CEAS, the policy responses of these two levels were remarkably different. While EU policy-makers, including the [European Parliament](#), called for a reform based on fair sharing of responsibility and a permanent distribution mechanism, Member States resorted to making unilateral decisions such as building fences, closing borders and deterring asylum-seekers. This may reflect the difficult balancing act of the Member States who are bound under the EU Treaties, on one hand, to provide protection and demonstrate solidarity, and, on the other hand, to ensure the security and social cohesion of their societies. A further obstacle is the increasingly negative [public opinion](#) of migration. While Member State citizens may express a wish for more EU involvement in this area, they do not necessarily view it as a shared responsibility.

### Potential for better implementation and further EU action

An [evaluation](#) of the implementation of the Dublin Regulation reveals that the weaknesses identified since its inception remain. Also, harmonisation is not achieved until Member States have fully [transposed or implemented](#) the CEAS in their national law, which is not yet the case.

Figure 1 – Opinion by generation, gender



Data source: EuroBarometer 85.1



In response to these concerns that were exacerbated by the mass influx, commentators called for reform of the Dublin system and [suggested](#) two main directions for action: harmonising national asylum standards and distributing refugees more evenly across the EU.

The Commission, having set migration as one of its ten [priority areas](#), presented a [European Agenda on Migration](#) in May 2015. To alleviate the immediate pressure, the Commission launched a ['hotspot' approach](#) to provide assistance in the main entry points, and proposed to activate an emergency mechanism under Article 78(3) TFEU for the [relocation](#) of asylum-seekers from frontline countries. Member States agreed on the exceptional relocation of 160 000 persons from Italy and Greece, and the resettlement of 20 000 displaced refugees from third countries. However, the [implementation](#) of this measure has been deemed unsatisfactory.

Following the [Valletta Summit on migration](#) on addressing the root causes of migration and further negotiations, a joint [statement](#) was issued with Turkey on stemming the flow of irregular migration via Turkey to Europe. Furthermore, the Commission intends to establish a new [Partnership Framework](#) with third countries to better manage migration.

As part of the plan to open more legal channels to Europe, the Commission presented a proposal to revise the [EU Blue Card Directive](#) for the entry of highly skilled workers and an [Action Plan](#) on the integration of third country nationals.

With regard to reform of the CEAS, the Commission has presented proposals for amending the [Dublin Regulation](#), which would include a new 'fairness mechanism'; reinforcing the [Eurodac](#) system for fingerprinting migrants; and enhancing the mandate of the European Asylum Support Office, turning it into a [European Union Agency for Asylum](#). Recast proposals for the remaining CEAS instruments are expected in July 2016.

## The EU budget and the issue of migration

In the fields of migration and asylum, the main funding tool that the EU has to complement Member States' efforts within the Union is the [Asylum, Migration and Integration Fund](#) (AMIF). The AMIF finances national and EU measures that aim at promoting the efficient management of migration flows, as well as the implementation and development of a common EU approach to asylum and migration. Under the 2014-2020 Multiannual Financial Framework (MFF), the AMIF is endowed with €3.13 billion. This is a €1 billion increase on its 2007-2013 predecessors, but represents 0.29% of the total 2014-2020 MFF. The AMIF is part of what the EU spends on home affairs, which also includes the [Internal Security Fund](#) (dealing, inter alia, with the related area of border management) and the financing of relevant EU agencies (e.g. EASO and Frontex). For the 2014-2020 MFF, the total EU resources for home affairs amount to €9.26 billion.

In addition, external-action funding tools of the EU may also support measures relating to the external dimension of migration and asylum, under their geographical and/or thematic programmes. Examples of such tools under the 'Global Europe' heading of the MFF are the [European Neighbourhood Instrument](#) (ENI) and the [Development Cooperation Instrument](#) (DCI).

## New financial instruments

To respond to the refugee crisis, the EP and the Council have mobilised additional resources for [2015-2016](#), not only by reinforcing existing instruments, but also by creating new ones. In particular, two [EU Trust Funds](#) are applicable for migration-related projects and aim to deliver EU and Member States' support efficiently, flexibly and swiftly. With a €500 million contribution from the EU budget, the Madad Fund was established to respond to the Syrian crisis and channel aid for Syria's neighbouring countries. With €1.8 billion contributions from the intergovernmental European Development Fund (EDF) and the EU budget, the Emergency Trust Fund for Africa targets 23 countries in the Sahel and the Lake Chad region, the Horn of Africa and North Africa. Its objective is to improve living conditions and encourage people to stay in their countries of origin. For the time being, the bulk of funding for these two Trust Funds has come from the EU budget and the EDF. In [October 2015](#), the EP called on individual Member States to deliver on

their promises and match the EU's financial contribution to the trust funds with their own contributions. At the same time, the EP said that these trust funds were established because the EU budget lacks the resources and the flexibility needed to address such crises promptly and comprehensively. On this basis, the EP called for a more holistic solution to be agreed in the framework of the review/revision of the 2014-2020 MFF.

In addition, Member States have decided to establish a €3 billion Facility for Refugees in Turkey, a joint coordination mechanism for actions funded by the EU budget (€1 billion) and national contributions (€2 billion). A further €3 billion will be available by 2018 on the condition that the initial allocation has been fully used and relevant commitments have been met.

### Potential for further financing at EU level

The refugee crisis has put considerable pressure on the expenditure ceilings set in the 2014-2020 MFF for relevant headings, with the need to [resort to](#) and [practically exhaust](#) available flexibility tools. For 2017, the Commission again proposes the use of flexibility tools to keep resources for the crisis at the strengthened level of €5.2 billion. The EP has repeatedly [called for](#) an integrated EU approach for migration, asylum and external borders, with sufficient resources and tools to handle emergency situations. As regards the external dimension of migration, on 7 June 2016 the Commission presented a [communication](#) on establishing a new Partnership Framework with third countries under the European Agenda on Migration. The proposal is to mobilise and focus EU action and resources outside the Union on migration management, by establishing partnerships with key countries of origin and transit. The Commission estimates that, up to 2020, nearly €8 billion could be available to support short-term goals (saving lives at sea; increasing returns, readmission and reintegration; and enabling migrants and refugees to stay close to home). The resources, which are on top of annual aid flows from the EU and its Member States to relevant countries, would come mainly from existing instruments and already pledged EU and national contributions, but a €1 billion increase is proposed for the EU Emergency Trust Fund for Africa (50% from the EDF and 50% from Member States). In addition, with a view to addressing the root causes of irregular migration in the long term, the Commission intends to table a proposal for an External Investment Plan in autumn 2016. This would include a mechanism similar to the European Fund for Strategic Investments (EFSI) [launched](#) in 2015 as part of the [Investment plan for Europe](#), to bridge the investment gap within the EU and with the involvement of the European Investment Bank (EIB). In practice, the Commission estimates that a new fund for external investments set up with a guarantee and funding of €3.1 billion from existing EU resources (€2 billion from the EDF and €1.1 billion from the EU budget) could trigger total public and private investments worth €31 billion in targeted countries, and adds that this amount could double if EU contributions are matched by Member States' contributions. These investments would target economic and social infrastructure and the private sector, with a view to creating employment and growth opportunities in third countries of origin and transit of migrants.

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# Reform of the Dublin system

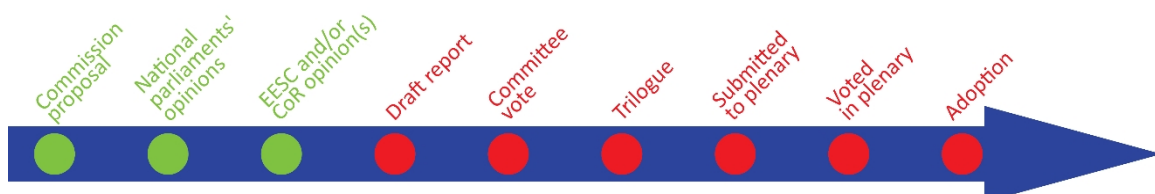
## OVERVIEW

The refugee and migrant crisis in Europe has exposed the need for reform of the Common European Asylum System, in general, and of the Dublin rules, in particular. The Commission's proposal of 4 May 2016 to reform the Dublin system does not change the existing criteria for determining which Member State is responsible for examining an asylum application.

Instead of a fundamental overhaul of the Dublin regime, as suggested by the Parliament, the Commission proposes to streamline and supplement the current rules with a corrective allocation mechanism. This mechanism would be triggered automatically were a Member State to be faced with disproportionate numbers of asylum-seekers. If a Member State decided not to accept the allocation of asylum-seekers from a Member State under pressure, a 'solidarity contribution' of €250 000 per applicant would have to be made instead.

**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)**

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2016) 270 4.5.2016
<i>Rapporteur:</i>	Cecilia Wikström (ALDE, Sweden)	2016/0133(COD)
<i>Shadow rapporteurs:</i>	Roberta Metsola (EPP, Malta) Elly Schlein (S&D, Italy) Daniel Dalton (ECR, UK) Cornelia Ernst (GUE/NGL, Germany) Jean Lambert (Greens/EFA, UK) Laura Ferrara (EFDD, Italy)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Publication of draft report	



## Introduction

The unprecedented migratory pressure on Europe has exposed the need to reform the Common European Asylum System (CEAS), in general, and the Dublin rules, in particular, as well as to secure greater solidarity and a fairer sharing of responsibility between Member States.

## Context

Europe is facing the worst refugee and migration crisis since the Second World War. Pushed by violence and poverty in the Middle East and Africa, and pulled by the prospect of safety and a better life in Europe, hundreds of thousands of asylum-seekers and economic migrants are seeking refuge in the EU.

According to [Eurostat](#), more than 1 million asylum applications were registered in the EU in 2016 (4th quarter 2016 data is still incomplete), compared with 1 322 825 in 2015 and 626 960 in 2014. In absolute values, the EU Member States to receive the highest number of asylum-seekers in 2016 were Germany (745 150), Italy (112 190), France (69 265), Austria (39 495), and Greece (36 765). As regards migrants' countries of origin, the majority of asylum-seekers in the EU in 2016 came from Syria (327 800), Afghanistan (180 960), Iraq (125 670), Pakistan (46 275), and Nigeria (43 560).

According to the International Organization for Migration ([IOM](#)), 5 082 migrants lost their lives trying to cross the Mediterranean Sea in 2016, compared with 3 777 in 2015 and 3 279 in 2014. According to [UNHCR](#), the number of dead or missing persons in the Mediterranean is 5 022 in 2016, 3 771 in 2015, and 3 500 in 2014.

## Existing situation

The Dublin regime was originally established by the [Dublin Convention](#), signed in Dublin, Ireland, on 15 June 1990. In 2003, the Dublin Convention was replaced by the [Dublin II Regulation](#). In 2013, the [Dublin III Regulation](#) was adopted, replacing the Dublin II Regulation. The Dublin III Regulation has been in force since 1 January 2014.

The Dublin system was never designed to achieve solidarity and the fair sharing of responsibility; its main purpose from the very beginning was to assign responsibility for processing an asylum application to a single Member State.

The Dublin III Regulation identifies the EU country responsible for examining an asylum application, by using a hierarchy of criteria such as family unity, possession of residence documents or visas, irregular entry or stay, and visa-waived entry. In practice, however, the most frequently applied criterion is the irregular entry, meaning that the Member State through which the asylum-seeker first entered the EU is responsible for examining his or her asylum claim.

The current migration and refugee crisis has revealed significant structural weaknesses in the design and implementation of the CEAS and of the Dublin regime. This has been confirmed by recent [external studies](#) on the Dublin system and acknowledged by the Commission in its [communication](#) of 6 April 2016.

## Parliament's starting position

Since 2009, the Parliament has consistently been calling for a binding mechanism for the fair distribution of asylum-seekers among all EU Member States (see EP resolutions of [25 November 2009](#), [11 September 2012](#), [9 October 2013](#), [23 October 2013](#), [17 December 2014](#), [29 April 2015](#), and [10 September 2015](#)).

In its [resolution](#) of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the Parliament made clear its position on the reform of the Dublin system:

- The criterion that it is the Member State of first entry that is responsible for the examination of a claim for international protection should be revised.
- 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 not in an individual Member State – and to establish a central system for the allocation of responsibility for anyone seeking asylum in the Union.
- Such a system could provide for certain thresholds per Member State relative to the number of arrivals, which could conceivably help in deterring secondary movements, as all Member States would be fully involved in the centralised system and no longer have individual responsibility for allocation of applicants to other Member States. Such a system could function on the basis of a number of Union 'hotspots' from where Union distribution should take place.
- Any new system for allocation of responsibility must incorporate the key concepts of family unity and the best interests of the child.

### Preparation of the proposal

In 2015, the Commission asked an external consultancy (ICF International) to prepare two studies: an [Evaluation of the Implementation of the Dublin III Regulation](#) and an [Evaluation of the Dublin III Regulation](#). These exposed a number of shortcomings in the design and implementation of the Dublin system.

In addition to the external evaluation, the Commission undertook targeted consultations with the coordinators of the political groups on the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, with Member States and with other stakeholders.

### The changes the proposal would bring

While keeping unchanged the existing criteria for determining which EU country is responsible for examining an asylum application, the Commission proposes to streamline and supplement the Dublin system with a corrective allocation mechanism (the so-called 'fairness mechanism'). The main elements of the proposal are:

- A new **automated system** to monitor the number of asylum applications received and the number of persons effectively resettled by each Member State.
- A **reference key** to determine when a Member State is under disproportionate asylum pressure.
- A **fairness mechanism** to address and alleviate that pressure.

### Automated registration and monitoring system

The development of a new automated registration and monitoring system is proposed. It would consist of a central system, a national interface in each Member State, and communication infrastructure between the central system and the national interface.

The automated system would record each asylum application made in the EU as well as the number of people each Member State effectively resettles. The central system would be run by a new [proposed](#) European Union Agency for Asylum.

**Determination of a Member State being under disproportionate asylum pressure**

A reference key is proposed to show the indicative share of the total number of asylum applications made in the EU that each Member State would receive if they were allocated according to a country's size and wealth.

This reference key would be based on two criteria with equal weighting: the size of the population, and the total gross domestic product (GDP) of a Member State.

Comparing the reference share to the actual distribution of asylum claims would help determine when one Member State is responsible for a disproportionate amount of asylum applications compared with other Member States.

Resettlements would be included under the number of asylum applications, to acknowledge the importance of efforts to implement legal and safe pathways to Europe.

**Fairness mechanism**

It is proposed that a fairness mechanism be applied when Member States are confronted with a disproportionate number of asylum applications. If the number of asylum applications made in a Member State is above 150% of the reference share, the fairness mechanism will be automatically triggered. All new asylum applications made after the triggering of the mechanism will be relocated across the EU.

If a Member State decides not to accept the allocation of asylum applicants from a Member State under pressure, a 'solidarity contribution' of €250 000 per applicant would have to be made.

New arrivals to Member States benefiting from the fairness mechanism will be relocated across the EU until the number of applications falls back below 150% of the country's reference share.

**Budgetary implications**

According to the Commission, the financial resources necessary to support implementation of this proposal would total €1 828.6 million for the 2017-2020 period. The Commission asserts that these financial needs are compatible with the current multiannual financial framework.

**Preliminary analysis**

The Commission's proposal was analysed in a June 2016 study on [The Reform of the Dublin III Regulation](#), commissioned by EP Policy Department C at the request of the LIBE Committee.

Francesco Maiani, the author of the study, argues that, by retaining the Dublin philosophy and relying on more coercion, the Commission's proposal is unlikely to achieve its objectives, while raising human rights concerns.

He advocates re-centring EU responsibility-allocation schemes on one key objective – quick access to asylum procedures. This would require taking protection-seekers' preferences seriously and de-bureaucratising the process.

According to him, such a reform would need to be accompanied by (a) stepping up the enforcement of refugee rights across the EU, (b) moving solidarity schemes from a logic of capacity-building to one of compensation, and (c) granting protected persons real mobility rights.



### Advisory committees

In its [opinion](#) on the reform of the CEAS, adopted on 8 December 2016, the Committee of the Regions (CoR):

- Considers that the approach taken by the Commission in the proposal to reform the Dublin Regulation is inadequate.
- Recommends building greater consideration for what asylum applicants have done, their professional experience and what they want, into the proposal, thereby discouraging secondary movements. The CoR stresses that positive incentives should be privileged wherever possible over sanctions in trying to avoid unwanted secondary movements.
- Suggests that in order to establish a Member State's real and current reception capacity, the number of arrivals in that country should also be taken into account, by incorporating this parameter into the reference key.
- Welcomes the introduction of a corrective mechanism for the allocation of applicants for international protection. However, the CoR points out that the threshold proposed by the Commission for triggering the mechanism is so high that even in times of crisis, the mechanism might not be triggered and so would be of no structural benefit.

In its [opinion](#) on the reform of the CEAS, adopted on 19 October 2016, the European Economic and Social Committee (EESC):

- Considers it essential to carry out an efficient and effective reform of the CEAS and improve legal means of accessing the EU based on the principle of respecting persecuted people's human rights.
- Approves of the proposed objective to improve and speed up the determination procedures in the interest of better efficiency, but believes that protective provisions should be clarified and included on procedural issues, individual treatment of applications, maintenance of discretionary clauses, maintenance of the deadline for the cessation of obligation for a Member State to assume responsibility, the rights of applicants, and the limitation of the corrective relocation mechanism.
- Stresses that all Member States should be responsible for providing applicants with detailed and up-to-date information regarding the procedures under the Dublin system.
- Points out that the principle of proportionality should be assured so that the system is sustainable in practice, with regard to applicants' quick access to the asylum procedure and the capacity of Member States' administrations to apply the system.

### National parliaments

The national parliaments of six Member States (Hungary, Slovakia, Czechia, Poland, Romania, and Italy) have [submitted](#) reasoned opinions stating that the Commission proposal does not comply with the principle of subsidiarity.

## Stakeholders' views

*This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.*

In its [comments](#) on the Commission proposal for a Dublin IV Regulation, the **European Council on Refugees and Exiles** (ECRE) makes a number of observations and recommendations as regards the proposed obligation of the Member State of first entry to assess certain grounds for inadmissibility; restricting the scope of the discretionary clauses; the cessation of responsibility after a period of time; provisions related to the obligations of the applicants; the human rights test for suspending Dublin transfers; the proposed expansion of the definition of family members; transfers of unaccompanied children to the country of first application; limitations on the scope of appeals against transfer decisions; and the solidarity mechanism.

In its [opinion](#) on the impact on children of the proposal for a revised Dublin Regulation, the European Union **Agency for Fundamental Rights** (FRA) examines the potential effects on children of the envisaged changes to the Dublin system. The opinion addresses the issues of excluding certain categories of applicants from the Dublin Regulation and its impact on the rights of the child and the right to respect for family life; the impact of sanctions for unauthorised secondary movements; procedural safeguards for children; best interests of the child; and the corrective allocation mechanism and fundamental rights.

In his [opinion](#) on the first reform package on the CEAS (Eurodac, EASO and Dublin Regulations), the **European Data Protection Supervisor** (EDPS) recommends stating in the Dublin Regulation that the introduction of the use of a unique identifier in the Dublin database may not, in any case, be used for other purposes than the purposes described in the Dublin Regulation. The opinion further defines other shortcomings of the different proposals and identifies additional recommendations in terms of data protection and privacy that should be taken in consideration in the legislative process.

In a [briefing paper](#) of September 2016, the **International Commission of Jurists** (ICJ) presents comments on key procedural aspects of the proposed Dublin Regulation. The paper raises concerns at the introduction of excessively short time-limits for asylum-seekers to access an effective remedy. It further opposes the limitation of the material scope of the remedy, and expresses concern at the punitive measures imposed on asylum-seekers, in particular when they lead to the loss of access to their rights.

In its note [CM1609](#), the **Meijers Committee** (CM) raises a number of concerns as regards the proposed reform of the Dublin Regulation. The note covers the issues of effective remedies; obligations of the applicant; cessation of responsibility and deleting the discretionary and sovereignty clauses; unaccompanied minors; first country of asylum and safe third country.

## Academic views

In a [paper](#) of October 2016, Marcello Di Filippo offers a strong critique of the Commission's proposal for a new Dublin Regulation and presents a set of recommendations on how to address the problem of allocating responsibility for processing asylum applications.



## Legislative process

The Commission adopted its proposal [COM\(2016\) 270 final](#) on 4 May 2016.

The proposal would recast the Dublin III Regulation and should be adopted on the same legal basis, namely Article 78, second paragraph, point (e) of the [TFEU](#), in accordance with the ordinary legislative procedure.

The proposal has been [assigned](#) to the Civil Liberties, Justice and Home Affairs Committee (LIBE), with Cecilia Wikström (ALDE, Sweden) appointed as rapporteur. Her draft report is expected early in 2017. Opinions are also to be provided by the Budgets Committee (BUDG) and the Foreign Affairs Committee (AFET). The Legal Affairs Committee (JURI) presented its [opinion](#) on use of the recast technique on 19 October 2016.

On 11 May 2016, the Parliament held an initial [debate](#) on the Commission's proposals to reform the CEAS. MEPs pointed out that the Dublin rules were not working and must be replaced with an efficient asylum system, based on solidarity among Member States.

On 10 October 2016, the LIBE Committee held a [hearing](#) on the reform of the Dublin system and crisis relocation, with expert contributions from EASO, FRA, NGOs and academia.

On 13-14 October 2016, the Justice and Home Affairs Council (JHA) [endorsed](#) the three-track approach suggested by the Slovak Presidency for the examination of the CEAS reform package proposals. On 8-9 December 2016, the JHA Council again [discussed](#) the reform of the CEAS, including the Dublin system.

The Asylum Working Party (the Council preparatory body responsible for issues relating to the CEAS) started the examination of the Commission proposal for Dublin Regulation recast at its meeting of 26 May 2016. While most Member States have entered general scrutiny reservations, the majority of delegations agreed on the need to reform the current Dublin rules and supported two of the main aims of the Regulation: faster and more efficient determination of the Member State responsible for examination of asylum claims, and prevention of secondary movements.

The main concerns [raised](#) by Member States during the first round of examination of the proposal included:

- A single Member State responsible for the examination of asylum claims and the removal of the cessation of responsibility.
- The obligation for Member States where the application was lodged to do certain checks before applying the criteria for determining the Member State responsible.
- The definition of 'family members'.
- Amended rules for remedies.
- Shorter deadlines for detention and transfers.
- The corrective allocation mechanism and the financial solidarity contribution.
- Questions of practical, operational and financial nature in relation to the new automated system.

## EP supporting analysis

Malmersjö G., Remáč M., [Regulation 604/2013 \(Dublin Regulation\) and asylum procedures in Europe: Implementation Appraisal](#), EPRS, PE 573.304 (2016).

Maiani F., [The Reform of the Dublin III Regulation](#), EP Policy Department C, PE 571.360 (2016).

Wagner M., Baumgartner P., Dimitriadi A., O'Donnell R., Kraler A., Perumadan J., Schlotzhauer J., Simic I., Yabasun D., [The Implementation of the Common European Asylum System](#), EP Policy Department C, PE 556.953 (2016).

Neville D., Sy S., Rigon A., [On the frontline: the hotspot approach to managing migration](#), EP Policy Department C, PE 556.942 (2016).

Guild E., Costello C., Garlick M., Moreno Lax V., Carrera S. [Enhancing the Common European Asylum System and Alternatives to Dublin](#), EP Policy Department C, PE 519.234 (2015).

Guild E., Costello C., Garlick M., Moreno Lax V., Mouzarakis M., Carrera S. [New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International Protection](#), EP Policy Department C, PE 509.989 (2014).

Thielemann E., Williams R., Boswell C., [What System of Burden-Sharing between Member States for the Reception of Asylum Seekers?](#), EP Policy Department C, PE 419.620 (2010).

## Other sources

[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](#), European Parliament Legislative Observatory (OEIL), 2016/0133(COD).

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*Second edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.*

# European Union Agency for Asylum

## OVERVIEW

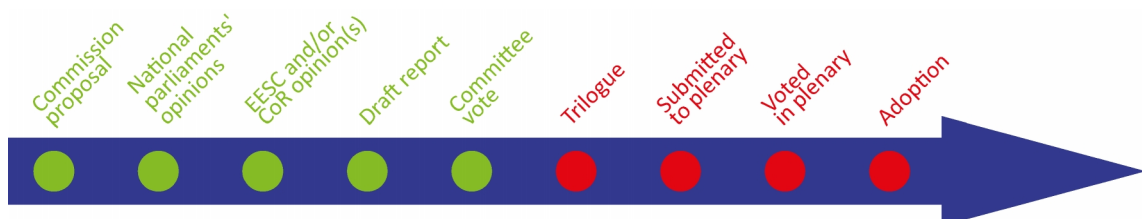
The European Asylum Support Office provides Member States with support in fulfilling their obligations under the Common European Asylum System. Since its establishment in 2010, the support office's role has been progressively expanded in order to reflect changes in the EU's legal framework on asylum and to respond to the growing needs of Member States.

In the context of the current migration and refugee crisis, the European Commission has presented a proposal to amend and expand the mandate of European Asylum Support Office with a view to turning it into a fully fledged agency. According to the proposal, the agency will ensure the efficient and uniform application of European Union asylum law in order to achieve greater convergence between Member States' asylum systems.

The proposal is part of a first set of legislative proposals put forward by the European Commission in May 2016 in order to reform the Common European Asylum System.

## Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2016) 271 4.5.2016
<i>Rapporteur:</i>	Péter Niedermüller (S&D, Hungary)	2016/0131 (COD)
<i>Shadow rapporteurs:</i>	Carlos Coelho (EPP, Portugal) Jussi Halla-Aho (ECR, Finland) Cecilia Wikström (ALDE, Sweden) Martina Anderson (GUE/NGL, UK) Josep-Maria Terricabras (Greens/EFA, Spain) Laura Ferrara (EFDD, Italy)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Trilogue negotiations	



## Introduction

The European Asylum Support Office ([EASO](#)) was set up in 2010 in order to contribute to the implementation of the Common European Asylum System ([CEAS](#)), facilitate practical cooperation among Member States on asylum-related matters and assist Member States subject to particular pressure on their asylum and reception systems.

The [proposal](#) for a regulation on the European Union Agency for Asylum seeks to amend and expand the mandate of EASO in view of turning it into a fully-fledged agency. The Agency will have the task to ensure the efficient and uniform application of Union asylum law across Member States in order to achieve greater convergence and to prevent secondary movements of asylum-seekers.

The proposal is part of an initial package of legislative proposals put forward by the European Commission in May 2016 in a bid to reform the CEAS. The package also includes proposals to revise the [Eurodac Regulation](#) and the [Dublin Regulation](#). A second set of proposals was presented in July 2016 and includes recast proposals on a common [procedure](#) for international protection, [qualification](#) standards and [reception](#) conditions.

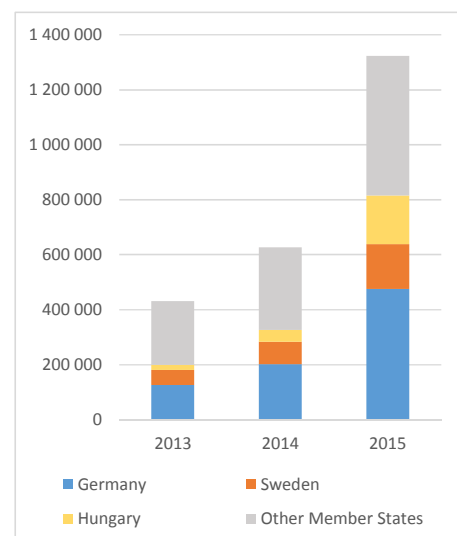
## Context

The unprecedented influx of [irregular migrants](#) and [asylum-seekers](#) into the EU since 2015 has revealed the structural weaknesses of the CEAS. The number of asylum applicants rose from 0.4 million in 2013 to 1.3 million in 2015, while the distribution of asylum applications across Member States remained highly uneven. In 2015, three countries (Germany, Hungary and Sweden) registered almost two thirds of the total number of individual asylum applications lodged in the EU (see Figure 1). According to partial figures published by [Eurostat](#), in 2016 there were 765 020 new asylum applicants in the EU, the majority of whom (745 155) lodged their applications in Germany.

Confronted with intense migration pressures, 'frontline' Member States on the EU's southern and eastern borders have failed to systematically register and fingerprint all persons crossing the border irregularly, as required by EU law. In order to prevent migrants from moving further into the EU, several Member States reinstated [temporary border controls](#) at the EU's internal borders.

The pressure generated by the current migration crisis exacerbates pre-existing imbalances in the European asylum system. Despite efforts to harmonise asylum standards in the EU, pronounced [differences](#)<sup>1</sup> between Member States' asylum policies persist, with particular regard to recognition rates, the rights of asylum-seekers and reception conditions. This gives migrants an incentive to take advantage of differing conditions ('asylum shopping') and encourages secondary movements within the EU.

**Figure 1 – Asylum applications in the 28 EU Member States**



Data source: [Eurostat](#).

## Existing situation

EASO was established by [Regulation No 439/2010](#)<sup>2</sup> and became operational in February 2011. Its aims are to contribute to the implementation of the CEAS, to support practical cooperation on asylum and to assist Member States subject to significant pressure on their asylum and reception systems. EASO was also designed to become a European centre of expertise in the area of asylum, with responsibility for collecting, analysing and sharing information on the implementation of the asylum *acquis*.

### Expanded role

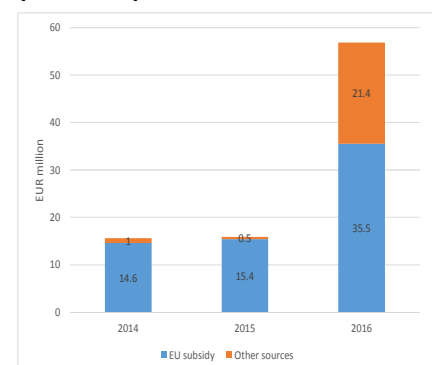
Since its establishment, EASO's role has been gradually expanded in order to reflect changes in the EU legal framework on asylum and to respond to the Member States' growing needs. The recast of the EU Asylum package in 2013 reinforced EASO's role in supporting Member States' efforts to implement the CEAS, providing relevant data and information on asylum and delivering training. To assist Member States facing an inordinate amount of pressure on their asylum systems, EASO organised and deployed asylum support teams consisting of national experts from Member States.

EASO was given a key role in the Early Warning, Preparedness and Crisis Management Mechanism (EWM), as provided for in Article 33 of the recast [Dublin Regulation](#). EWM aims to detect deficiencies and situations of pressure in national asylum systems with a view to ensuring that Member States take appropriate measures to avert further deterioration of the asylum system. The mechanism has never been activated to date.

EASO was called to play a major role in implementing the immediate actions outlined in the [European Agenda on Migration](#) that focused on strengthening the EU emergency response to the unfolding migration crisis. Together with Frontex and Europol, EASO has been present in the [hotspots](#) in Greece and Italy and assisted with the identification, fingerprinting and registration of incoming migrants. It is involved in the implementation of the EU [relocation programme](#), of the [EU-Turkey statement](#), and of the EU resettlement schemes. The European Commission has called upon EASO to further increase its role in a number of areas, including in identifying risk trends, providing Member States with guidance on improving standards of reception conditions, and developing guidelines for maximising legislative provisions against abuses.

To enable the Agency to fulfil its new tasks, EASO's budget was increased from €15.9 million in 2015 to €56.9 million in 2016 (as amended in September 2016) (Figure 2).

**Figure 2 – EASO budget (€ million)**



Data source: [EASO](#).

### Shortcomings

In the context of greatly increased demand for assistance, EASO has been facing difficulties in recruiting and deploying experts. The European Commission, in its [Seventh report on relocation and resettlement](#) of 9 November 2016, urged Member States to respond more promptly to EASO's calls for experts in order to ensure the adequate presence of EASO on the ground. Currently, in Greece EASO requires the permanent deployment of 28 experts to support the relocation scheme. The number of asylum experts also falls short of the number needed under the contingency plan in Italy.

The [study](#) on the Implementation of the Common European Asylum System, prepared for the LIBE Committee in May 2016, recommended extending EASO's mandate to cover

screening functions, including assessment and decision making on the eligibility of asylum applicants for relocation (under a permanent EU relocation system). It argued that, in the long run, the agency should 'gradually take responsibility for processing asylum claims in one single asylum procedure' and 'should have the competence to grant international protection status to applicants, mutually recognised throughout all EU Member States'.

The [study](#) on the reform of the Dublin III Regulation, prepared for the LIBE Committee in June 2016, noted that EASO's assistance had 'not yet had a strong impact in operational terms' owing to its limited resources and reduced scale of operations. The study suggested centralising support services for status determination in the hands of a new asylum agency and conferring on it the task of determining the Member State responsible for international protection.

In 2014 [Amnesty International](#) pointed out that 'the financial resources allocated to this agency do not reflect the high expectation placed on it to support EU Member States and institutions'. It also criticised EASO's lack of transparency with regard to its activities.

### Parliament's starting position

The European Parliament has consistently called for an enhanced role for EASO in order to ensure the full implementation of the CEAS. In its [resolution](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration, of 17 December 2014, the European Parliament called for reflection on the future development of the EASO and urged Member States to show solidarity and commitment by making sufficient contributions to EASO's budget and operations.

In its [resolution](#) of 12 April 2016, Parliament called for EASO to be made into a fully-fledged EU agency that would ensure the uniform application of CEAS rules and would provide Member States with enhanced operational support. Parliament also called for additional funding for EASO so as to provide proper support for its enhanced role in the context of the migration crisis and refugee crisis. The call for funding was renewed in the [resolution](#) of 6 July 2016 on the preparation of the post-electoral revision of the 2014-2020 multiannual financial framework.

### Council and European Council starting position

The **European Council's** 2014 strategic [guidelines](#) identified the reinforcement of EASO as one of the measures needed for the strengthening of the CEAS. The European Council has, on several occasions, called upon EASO to step up its assistance to Member States.

The **Council** has also showed support for the expansion of EASO's role. On 21 April 2016 the Justice and Home Affairs Council [called](#) upon EASO to develop a role as the clearing house for national 'country of origin' Information.

### Preparation of the proposal

The reinforcement of EASO is an integral part of the strengthening of the CEAS, as outlined by the European Commission in the [European Agenda on Migration](#) of 13 May 2015. In its [communication](#) 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe' of 6 April 2016 the Commission announced a set of proposals for reforming the CEAS: establishing a sustainable and fair system for determining the Member States responsible for asylum-seekers, reinforcing the Eurodac system and developing an enhanced mandate for the EASO.



The proposal for an EU Agency for Asylum builds on two evaluations of EASO. The Commission's 2013 [internal evaluation](#) was rather limited in scope. It did however acknowledge certain deficiencies with regard to EASO's capacity to deploy experts and thus urged Member States to respond promptly to its calls for experts and assets.

The [external evaluation](#) of EASO, concluded in 2015, found that EASO had generally implemented its key tasks effectively and that it had demonstrated adequate crisis response capacity. The evaluation pointed to several shortcomings and risks, however, such as potential operational overlaps with other justice and home affairs agencies and networks and a rather underdeveloped strategy on cooperation with third countries. The evaluators recommended revising EASO's mandate in order to reflect its enhanced role in the areas of joint processing, integration, reception and return.

The [report](#) on the evaluation of the Implementation of the Dublin III Regulation, prepared for the European Commission in March 2016, looked into why EWM has never been triggered, despite several situations of extreme pressure on national asylum systems, and found that EASO had provided only a limited collection of data and quantitative indicators that were insufficient for the European Commission to activate the mechanism.

### The changes the proposal would bring

#### *Monitoring and assessing the implementation of the CEAS*

The agency will **operate the reference key** for the application of the corrective mechanism envisaged by the new Dublin system. It will participate in the Eurodac system by taking fingerprints, collecting and processing personal data. The agency will be tasked with monitoring and assessing **all aspects of the CEAS**, including asylum procedures, the Dublin system, recognition rates, the quality of international protection afforded, and compliance with operating standards and guidelines. Moreover, the agency will be **able to intervene** in support of a Member State when the functioning of the CEAS is jeopardised and the Member State concerned fails to take remedial action.

#### *Ensuring enhanced practical cooperation and an exchange of information*

The agency will gather and analyse information on the asylum situation in the EU and in relevant third countries. It will play a stronger role in analysing the situation in **countries of origin** and provide advice on safe countries of origin. The agency will be able to rely on information from Member States, which will now have **a duty to cooperate** and an obligation to exchange information. The agency will establish and coordinate a network on country of origin information. Member States will have an **obligation to use** the information published by the agency and to inform it of their decisions on international protection for applicants whose country of origin was subject to joint analysis. The agency will also assist the European Commission with a regular review of the situation in third countries on the common EU list of safe countries of origin.

#### *Promoting EU legal instruments on asylum and issuing implementing rules*

The agency will have the **power to adopt** various types of technical document, such as performance standards, guidelines and best practice regarding the implementation of EU legal instruments in the field of asylum on the basis of its initiative or at the request of the Commission. Member States will have the **obligation to observe** these rules.

#### *Stepping up operational and technical assistance for Member States*

The agency will continue to deploy asylum support teams and will set up an **asylum intervention pool** composed of a reserve of at least 500 asylum experts. In a new departure, the deployment of experts from the asylum intervention pool will be

**mandatory** on Member States. Experts forming part of the asylum support teams or deployed from the asylum intervention pool will be able to consult relevant national and European databases.

#### *Enhanced role in cooperation with third countries*

The proposal provides more clearly for possibilities for cooperation between the agency and third countries. The agency will be able not only to coordinate the exchange of information between Member States and third countries but also to engage in **operational cooperation**.

#### *Budgetary implications*

In order to enable the agency to fulfil its mission under the expanded mandate, the proposal provides for a budget of **€363.963** million for the 2017-2020 period and for a staff increase of **357 members** over the same period.

### **Advisory committees**

The **Committee of the Regions (CoR)**, in its [opinion](#) on the reform of the Common European Asylum System, of 8 December 2016, welcomed the reinforcement of the European Asylum Support Office and called on the new European Agency for Asylum to cooperate with regional and local authorities and to provide assistance for regions in the frontline of reception. It also suggested that the reinforced agency 'be given responsibility for monitoring and reporting any failures to comply with [CEAS] requirements, partly so that the European Commission can apply penalties'.

In its [opinion](#) adopted on 19 October 2016, the **European Economic and Social Committee (EESC)** expressed its support for the proposal but called for the Consultative Forum to be given a greater role and for better use to be made of the information provided by these organisations when monitoring the implementation of the CEAS.

### **National parliaments**

The deadline for the subsidiarity check passed on 29 September 2016. Chambers of [national parliaments](#) from 17 Member States considered the proposals and a number submitted comments for political dialogue. The Parliament of Czech Republic submitted an [opinion](#) in which it disagreed with granting the agency the power to intervene in a Member State on its own initiative and rejected the obligation for Member States to take into account the agency's joint analysis on countries of origin or any other standardised procedures. In its [opinion](#), the Polish Senate also opposed the agency's ability to intervene in the territory of a Member State without its approval.

### **Stakeholders' views**

*This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.*

In a [policy note](#) of 20 January 2017, the **European Council on Refugees and Exiles (ECRE)** stated that some of the changes put forward by the proposal raised 'fundamental questions relating to the new agency's accountability, impartiality and independence'. While welcoming the strengthening of EASO's role in monitoring and assessment, ECRE pointed to several risks related to the fact that the proposed agency lacked a protection mandate, had broad and unjustified powers to process applicants' personal data and could violate the principles of confidentiality and non-disclosure of information to the alleged persecutor when engaging in practical cooperation with third countries. In its [comments](#) of July 2016, ECRE had expressed doubts about the ability of the new agency



to ensure high standards of protection given the overall direction of the CEAS reform, which is likely to generate a 'race to the bottom' in terms of refugee protection.

The **European Data Protection Supervisor (EDPS)** issued an [opinion](#) on 21 September 2016, in which he recommended making several clarifications in the text in order to indicate that responsibility for processing personal data will be with the Member States, to clarify the term 'administrative purposes' used in Article 30(3), and to specify responsibilities for ensuring the security of the agency's equipment.

Other [commentators](#) raised concerns about the significant increase in the data to be collected, stored and shared by the agency and about its unclear role in processing applications in Member States.

### Academic views

The idea of a European asylum agency with wider competences has been put forward by several academics. [Guy Goodwin-Gill](#)<sup>3</sup> has argued for a genuine European migration and protection agency to ensure that Member States fulfil their individual obligations to refugees and migrants. This protection agency would be tasked with establishing procedural rules governing the determination of claims to protection. [Elspeth Guild](#)<sup>4</sup> maintains that 'a new agency may be the best viable route to achieving a real and effective CEAS'. However, such an agency should be 'truly dedicated to international protection' and not driven by a rationale of reducing recognition rates and minimising protection standards.

According to a [study](#)<sup>5</sup> by the Centre for European Economic Research (ZEW), a European asylum agency could offer economies of scale leading to a more cost effective system and would also eliminate current incentives for refugees to concentrate on a few countries.

### Legislative process

The legislative proposal ([COM\(2016\) 271](#)) was published on 4 May 2016. It falls under the ordinary legislative procedure ([2016/0131/COD](#)).

In the European Parliament the proposal was assigned to the Civil Liberties, Justice and Home Affairs Committee (LIBE) under the rapporteurship of Péter Niedermüller (S&D, Hungary). The rapporteur presented his [draft report](#) on 7 September 2016. The draft report welcomed the Commission proposal and put forward several amendments, which focused on: strengthening the relationship between the agency and UNHCR; reinforcing fundamental rights safeguards, in part by appointing a fundamental rights officer, establishing a complaints mechanism, and appointing a data protection officer; ensuring adequate training and developing a code of conduct for experts; providing access for the agency to relevant EU databases, such as Eurodac, VIS, SIS II and Entry-Exit; and making the European Parliament and the Council jointly responsible for appointing the executive director and the deputy executive director of the agency. The Committee on Foreign Affairs prepared a [draft opinion](#) on 6 October 2016 and the Committee on Budgets adopted an [opinion](#) on 12 October 2016. On 8 December 2016, LIBE [backed](#) the proposal and approved a negotiating mandate and team with a view to reaching a first-reading deal with the Council on the legislative proposal.

The Justice and Home Affairs (JHA) Council, [meeting](#) on 9 and 10 June 2016, took note of the European Commission's first set of proposals to reform the CEAS. At the [meeting](#) of 13-14 October 2016 the JHA Council decided, on a suggestion from the Council Presidency, to focus on examining the legislative proposals on the revision of Eurodac and

EASO regulations with the aim of achieving progress towards the Council's general approach by the end of the presidency term. Several ministers indicated that the agency should not replace the role of the Commission in monitoring the implementation of EU law but rather play a supporting role for Member States. On 20 December 2016, the Permanent Representatives Committee [endorsed](#), on behalf of the Council, a mandate for negotiations on the regulation on the European Union Agency for Asylum.

### EP supporting analysis

[Reception of asylum-seekers – recast Directive](#), EPRS, November 2016.

[Resettlement of refugees: EU framework](#), EPRS, October 2016.

[Recast Eurodac Regulation](#), EPRS, October 2016.

[Reform of the Dublin system](#), EPRS, September 2016.

[Hotspots and emergency relocation: State of play](#), EPRS, March 2016.

[EU legal framework on asylum and irregular immigration 'on arrival', State of play](#), EPRS, March 2015.

[European Asylum Support Office \(EASO\)](#), EPRS, February 2015.

[The Reform of the Dublin III Regulation](#), EP Policy Department C, June 2016.

[The Implementation of the Common European Asylum System](#), EP Policy Department C, May 2016.

### Other sources

[European Union Agency for Asylum](#), European Parliament, Legislative Observatory (OEIL), Procedure file: 2016/0131(COD).

### Endnotes

<sup>1</sup> E. Guild and S. Carrera, [Rethinking asylum distribution in the EU: Shall we start with the facts?](#), CEPS Commentary, 17 June (2016).

<sup>2</sup> In line with the provisions of [Protocols](#) 21 and 22 annexed to the Treaties, Denmark did not take part in the adoption and application of Regulation No 439/2010, whereas the United Kingdom and Ireland did opt to participate.

<sup>3</sup> G. Goodwin-Gill, [Regulating 'Irregular' Migration: International Obligations and International Responsibilities](#), Notes for a Keynote Address, University of Athens (2015).

<sup>4</sup> E. Guild, ['Does the EU Need a European Migration and Protection Agency?'](#) *International Journal of Refugee Law* (2016).

<sup>5</sup> M. Berger and F. Heinemann, ['Why and How There Should Be More Europe in Asylum Policies'](#), ZEW Policy Brief, No 1 (2016).

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*Second edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.*

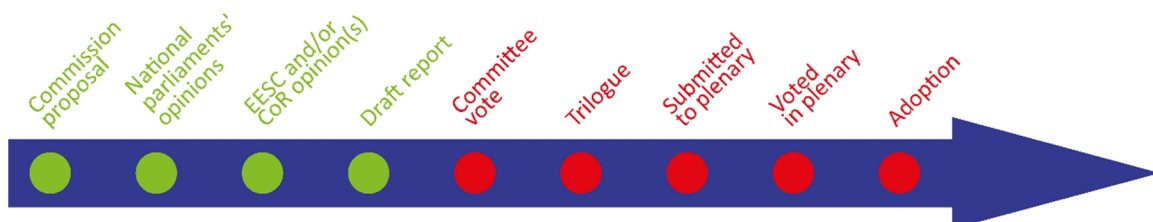
# Recast Eurodac Regulation

## OVERVIEW

Eurodac is a biometric database in which Member States are required to enter the fingerprint data of asylum-seekers in order to identify where they entered the EU. Established in 2000 and reviewed in 2013, its main purpose is to facilitate the application of the Dublin Regulation. The 2013 revision broadened the scope to enable law enforcement authorities too to access the Eurodac database. As part of the reform of the Common European Asylum System, the European Commission proposes a recast Eurodac Regulation. The proposal is now with the co-legislators, who need to ensure that the reinforcement of the system is in compliance with the fundamental rights of migrants as well as the principles of data protection.

**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)**

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2016) 272
<i>Rapporteur:</i>	Monica Macovei (ECR, Romania)	4.5.2016
<i>Shadow rapporteurs:</i>	Jeroen Lenaers (EPP, the Netherlands)	2016/0132(COD)
	Sylvia-Yvonne Kaufmann (S&D, Germany)	Ordinary legislative procedure (COD)
	Gérard Deprez (ALDE, Belgium)	(Parliament and Council on equal
	Malin Björk (GUE/NGL, Sweden)	Footings – formerly
	Judith Sargentini (Greens/EFA, the Netherlands)	'co-decision')
	Fabio Massimo Castaldo (EFDD, Italy)	
<i>Next steps expected:</i>	Consideration of draft report	



## Introduction

Eurodac stands for European Asylum Dactyloscopy (fingerprints) database. It is a computerised system consisting of a central unit, which operates the central database of biometric data, and of a communication infrastructure for transmitting the data between the Member States and the central unit. First established in 2000 under the Eurodac Regulation and subsequently reviewed in 2013, its main purpose is to facilitate the application of the Dublin Regulation, which determines the Member State responsible for processing an asylum claim. In many cases, it is the first country of entry and for that reason, it is essential to establish where the applicant entered the EU. This is the underlying logic for creating the Eurodac database, in which Member States are required to record the fingerprint data of all persons who are seeking asylum or who have been apprehended crossing the external border irregularly.

## Context

Over the past two years, [migratory flows](#) into the EU have grown substantially, exhausting national reception capacities, revealing gaps in registration of arrivals and exacerbating [shortcomings](#) of the current migration management system.

According to Frontex's [annual risk analysis](#) for 2016, the majority of persons who entered through Greece, and many of those who entered through Italy, in 2015 moved on to other EU Member States, mostly Germany. Frontex estimates that around 1 million persons travelled through the EU without proper travel documents. This created new challenges for Member States, who had to find ways to register and transport large numbers of persons. It also led to fears of threats to internal security, as the identity and motivation of migrants remained undetermined. Following the high pressure at EU external borders in September 2015, when migrants tried to force their way to other countries, several Member States resorted to the temporary [reintroduction of internal border controls](#). Frontex notes that while reintroducing internal border control managed to regain a certain degree of order at the borders, it did not stem the migratory flows at external or internal borders between September and December 2015.

The European Commission, tasked under the [European Agenda on Migration](#) to find solutions to the migratory challenge, proposed a reform of the [legal framework](#) of the Common European Asylum System (CEAS) for the reception and recognition of persons in need of international protection. In the legislative package presented on 4 May 2016, aimed at reforming the CEAS, the Commission made three proposals for: [amending](#) the [Dublin Regulation](#), creating a [European Union Agency for Asylum](#), and reinforcing the [Eurodac](#) system for fingerprinting migrants. This first package was complemented on 13 July 2016 with the publication of three further proposals: to replace the [Asylum Procedures Directive](#) and the [Qualification Directive](#) with directly applicable regulations, and to reform the [Reception Conditions Directive](#).

## Existing situation

### *2013 Regulation*

The current [Eurodac Regulation](#) applies to all EU Member States (the UK had opted in prior to adoption in 2013, while Ireland [opted in](#) in 2014) except Denmark. The latter does not participate in adoption of legislation in this area, but has a [separate agreement](#) with the EU to apply the [initial Eurodac Regulation](#) from 2000. It is also used in four associated countries (Iceland, Norway, Switzerland and Liechtenstein). Participating states are

required to 'promptly' fingerprint all persons over the age of 14 who fall into one of the following two categories:

- applicants for international protection;
- third-country nationals or stateless persons found crossing the external border irregularly.

Authorities may also fingerprint third-country nationals or stateless persons found illegally staying in a Member State, but in contrast to the first two categories, registering their fingerprints is currently not mandatory. The regulation establishes common procedures and standards but does not deal with enforcement. Fingerprinting and Eurodac registration remain primarily a task for Member State authorities. This is regulated under national legislation, ensuring not only compliance with the regulation, but also with fundamental rights obligations resulting from EU and international law, in particular with the [European Convention on Human Rights](#) and the United Nations [Convention on the Rights of the Child](#).

The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice ([eu-LISA](#)) is in charge of operational management of Eurodac as well as its maintenance in accordance with security and data protection law. The Agency also organises training on the use of Eurodac for national authorities, and [provides](#) statistics and reports.

#### *Failure to fingerprint*

The mass influx of migrants over the past two years revealed gaps in registration of migrants at the border, as required under the Eurodac Regulation. One of the reasons for the lack of systematic fingerprinting in some countries is the lack of capacity given the large flows of migrants. Greek authorities [estimated](#) in August 2015 that more than a third of migrants arriving on Lesbos, Kos and other islands are not fingerprinted. German police [deplored](#) in July 2015 that they lacked the resources to fingerprint all arriving migrants. [Frontline countries' difficulties](#) in meeting the legal requirement to fingerprint has led to a situation where unregistered asylum-seekers who move on within the Schengen area to reach other countries are not identified.

To address problems related to registering migrant arrivals, and to adapt reception capacities to the large influx, the Commission proposed a '[hotspot system](#)' as an immediate action under the European Agenda on Migration. The aim was to create a platform for EU agencies such as Frontex, EASO and Europol to intervene temporarily, and to provide operational support for identification, registration and fingerprinting of migrants at the sections of the external border 'characterised by specific and disproportionate migratory pressure, consisting of mixed migratory flows'.<sup>1</sup> In its February 2016 state-of-play [report](#), the Commission indicated that the hotspot approach had significantly increased the registration of fingerprints in the Eurodac database: the level had risen in Greece from 8% in September 2015 to 78% in January 2016, and in Italy from 36% to 87% over the same period. In its [sixth report on relocation and resettlement](#), published on 28 September 2016, the Commission observed that the close cooperation of Member States, EU agencies and international organisations in the hotspots has resulted 'in the achievement of close to 100% fingerprinting'.

Nevertheless, the difficulties of fingerprinting are not limited to the lack of reception and administrative capacity at the entry points. Another aspect is the high number of applicants refusing to have their fingerprints taken, or intentionally damaging their

fingerprints to avoid identification, as evidenced by the 2014 [Annual Report](#) on Eurodac. Reasons vary, from fear and mistrust of authorities to the desire only to be registered in a specific country – with higher recognition rates or in which asylum-seekers have family and community ties. When migrants move onwards in the Schengen area without being registered, they effectively bypass the Dublin rules and put in jeopardy the overall functioning of the CEAS. A Council of Europe [report](#) from September 2015 takes note of this situation and comes to the conclusion that both Member States and migrants have incentives to evade the procedures.

#### *Law enforcement access*

As regards the fears for internal security following the arrival of large numbers of persons who remain unidentified, the 2013 Eurodac Regulation introduced the possibility for national police and Europol to access Eurodac data for the purposes of preventing, detecting and investigating serious crimes and terrorism. They can also check the database to match the fingerprints of irregular migrants for identification, but without storing that data. However, this access for law-enforcement purposes is not applicable to all countries. Participation in the Dublin and Eurodac Regulations, on the basis of [special agreements](#), by Denmark, as well as four Dublin associated countries (Norway, Iceland, Switzerland, and Liechtenstein), is currently only possible for asylum-related purposes.

#### *Data protection supervision*

The processing of data in the central unit of Eurodac is supervised by the European Data Protection Supervisor ([EDPS](#)) since 2004, while national data protection authorities are in charge of data processing and transmission in their respective Member States. The [Eurodac Supervision Coordination Group](#), comprising the EDPS and national authorities (from 27 Member States and Dublin associated countries), meets twice a year to discuss common problems related to the use of Eurodac, and to seek common solutions. In 2016, the Group met on [15 April](#) and on [23 November](#) in the European Parliament.

### **Parliament's starting position**

In its [resolution](#) of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament stresses the importance of allocating technical and financial resources and support to the main countries of entry, to 'enable the swift and effective registration and referral to the competent authorities of all migrants arriving in the Union with full respect for their fundamental rights'. The Parliament observes that, while one of the main aims of creating the hotspots is to provide help to those in need, the proper identification of asylum-applicants at entry points should also contribute to the overall functioning of the CEAS.

### **Council and European Council starting position**

The **European Council** of [25-26 June 2015](#) gave its green light to setting up hotspots in the frontline Member States, with operational support provided by EASO, Frontex and Europol, to 'ensure the swift identification, registration and fingerprinting of migrants'. The purpose of the hotspot approach was to reduce pressure at the borders, but also to determine those who need international protection and those who do not. The hotspot approach was approved at the [informal meeting](#) of Heads of State or Government on 23 September 2015 as part of the priority actions proposed by the Commission to offer short-term relief at the EU's external borders.



## Preparation of the proposal

The first Eurodac Regulation was adopted in 2000 and revised in 2013 to improve the compatibility of the system with the recast EU asylum *acquis*, including the Dublin III Regulation, and to help complete the CEAS.

The purpose and the scope of application of the Eurodac Regulation have been continually broadened since its creation. At the outset, the data were accessible only to immigration authorities to help them detect multiple asylum applications and prevent irregular entries. The scope of application was subsequently broadened in the 2013 regulation to enable law enforcement authorities access the Eurodac database.

In light of the developing migratory pressure, on 27 May 2015 the Commission published a [staff working document](#) on Implementation of the Eurodac Regulation, which was endorsed by the [Council](#) on 20 July 2015. This document provides [guidelines](#) for Member States to follow a common approach to fingerprinting, which encompasses counselling and informing applicants of their rights and obligations, but also specifies that 'if applicants do not cooperate..., Member States should make use of specific and limited use of detention, and use coercion as last resort'. This suggestion is based on a 2014 [ad hoc query](#) on Eurodac fingerprinting published by the European Migration Network ([EMN](#)) on laws and practices used in Member States. While most (18 out of 28) do not allow the use of force or coercion for asylum-seekers (category 1), the situation is more varied for irregular migrants (categories 2 and 3), with several allowing for the use of coercion, detention or both.

## The changes the proposal would bring

### *More data collected and stored for longer*

The proposal introduces the obligation to store data on names, nationalities, place and date of birth, and travel document information. For asylum-seekers, the asylum application number and the Member State responsible under the Dublin Regulation will also be stored. The retention period for data on asylum-seekers will continue to be 10 years.

Currently, the Eurodac Regulation enables Member States to search for matches in the database to determine the identity of irregular migrants but does not require their data to be stored in the system. The new proposal introduces a requirement also to collect and store data on third-country nationals or stateless persons who have been found irregularly on EU territory (Article 14). Their personal data, and where relevant their date of removal would be introduced in the database and retained for five years (rather than 18 months under the current regulation). This information could then be used for the issue of a travel document for their return and readmission. The Commission explains that the aim is to track secondary movements within the EU and to strengthen the EU's return policy. Commentators have [referred](#) in this regard to the Commission's plans to expand the use of the Visa Information System (VIS) which already contains alerts on third-country nationals who should be refused entry to the EU, and have pointed to possible duplication.

### *Fingerprinting age lowered to 6*

Under the new proposal, the fingerprinting age is lowered from 14 to 6 years. The Commission explains this modification by stating that many families travel to Europe with very young children who may get separated from their parents on the way. Collecting children's fingerprints and facial images would help authorities to query the system to

determine whether they have ended up in another Member State. The Commission also sees the modification as beneficial to unaccompanied minors, who might abscond from care institutions or child social services, and who cannot be identified under the current legal framework.

#### *Facial images stored in addition to fingerprints*

The new proposal introduces the requirement to store facial images in addition to fingerprints. The Commission refers to the fingerprinting difficulties reported by some Member States where applicants either refuse to have their fingerprints taken or damage their fingerprints. Use of additional biometrics was also one of the commitments made by the Commission under the European Agenda on Migration.

#### *Possible access to third country authorities*

Under the 2013 Eurodac Regulation, the police, public prosecutors and Europol could search the database alongside national immigration authorities. The new recast proposal goes even further, suggesting giving partial access to the authorities of third countries on certain conditions (Article 38). These authorities would not acquire direct access to the database but personal data could be transferred or made available for them to prove the identity of third-country nationals for return purposes. Their access would be subject to conditions, including the refusal to disclose if the person has applied for asylum. But [commentators](#) have already pointed out that this information is, nevertheless, already available to such third countries on certain conditions under the Asylum Procedures Directive.

### **Advisory committees**

The Committee of the Regions (CoR) assessed the Eurodac proposal among other elements of the CEAS reform in its opinion, 'Reform of the Common European Asylum System' ([CDR 3267/2016](#)), which was adopted on 8 December 2016. While supporting some objectives of the proposals, such as limiting unauthorised secondary movements, distributing asylum-seekers more evenly in the Member States and strengthening EASO, CoR considers the Commission's reform approach inadequate. More specifically regarding the Eurodac proposal, the Committee endorses lowering the fingerprinting age from 14 to 6 years to help find missing minors through sharing of data between EU agencies and Member States' authorities. However, CoR finds that the prohibition on sharing data with third countries should stay in effect.

The European Economic and Social Committee (EESC) adopted its opinion on 'Reform of the Common European Asylum System (CEAS) – 1st package' ([SOC/543](#)) on 19 October 2016. The EESC assesses that extending the scope of the Eurodac Regulation to include data on third-country nationals 'who have not applied for international protection and are residing in the EU irregularly' would need to be duly balanced by the necessity and proportionality of the measures, especially 'with regard to applicants for international protection and the confidentiality of the procedure'.

### **National parliaments**

On 23 September 2015, the Civil Liberties, Justice and Home Affairs (LIBE) Committee organised an [Interparliamentary Committee Meeting](#) feeding into the Parliament's resolution on the situation in the Mediterranean and the need for a holistic EU approach to migration. It allowed members of national parliaments to hold an in-depth discussion with EU agencies such as EASO, Frontex and Europol on the 'hotspot' approach, including on the registration and fingerprinting of migrants.



For the [subsidiarity check](#) of the proposal, the deadline for submitting reasoned opinions was 27 October 2016.

The Chamber of Deputies of the Czech Parliament submitted a [reasoned opinion](#) on package of proposals for CEAS reform. However, as regards the proposed recast Eurodac Regulation, there was no subsidiarity concern, which was the case with the proposal for the revised Dublin Regulation.

The [Portuguese Parliament](#), and the Italian [Senate](#) and [Chamber](#) also made comments on the proposal.

### Stakeholders' views

*This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.*

#### Data protection

One of the main concerns surrounding the Eurodac database is data protection. In its initial comments on the new proposal, ECRE [deplores](#) that 'data protection principles such as purpose-limitation, necessity and proportionality are at risk of being compromised from such a broad expansion'.

Data protection and privacy concerns, while already raised in respect of the initial regulation, were [considered](#) to have multiplied with the addition of law enforcement access in the 2013 Regulation. Departing from the premise that the risk of misuse of biometric data is increased when stored in a centralised database, commentators referred to the European Court of Human Rights (ECtHR) statement<sup>2</sup> that centralised units should all be adequately protected against unauthorised access and attacks. Should this not be the case, the right to respect for private life under Article 8 [ECHR](#) would be violated.

The European Association for the Defence of Human Rights (AEDH) [finds](#) that the proposal significantly exceeds the initial scope of Eurodac and introduces coercive forms that are not necessarily accompanied by adequate safeguards. It emphasises that the European Parliament should be closely involved in the supervision of Eurodac, ensuring that its application respects data protection standards as well as the right to apply for international protection.

#### Law enforcement access

Concerning law enforcement access under the 2013 Eurodac Regulation, the EDPS had already [pointed](#) to difficulties in reconciling the proposals with the 'purpose limitation' principle and warned against function creep. He also questioned the necessity and proportionality of law enforcement access, and warned against potential unequal treatment between asylum-seekers and other individuals. This concern was shared by the United Nations High Commissioner for Refugees (UNHCR), [commenting](#) that it would 'further risk putting persons seeking international protection at risk of stigmatisation'.

The use of databases leading to potential discrimination for lack of proportionality has also been condemned by the ECtHR in 2008 in the [S. and Marper](#) case. With the scope of the regulation is expanded even further under the proposal, these concerns would only be amplified. In a [study](#), 'The Implementation of the Common European Asylum System', prepared for the Civil Liberties, Justice and Home Affairs Committee of the European Parliament in May 2016, experts question in particular the proportionality and necessity of extending 'the personal and material scope of the Regulation' and their compatibility

with the [purpose limitation](#) principle. They also draw attention to the fact that, in storing such a significant amount of personal data and continually expanding the list of authorities who can access this data, a proper balance between competing public interests and the need to protect the rights of a highly vulnerable group is essential.

#### *Use of detention and coercion*

The above-mentioned Commission working document, which allows 'specific and limited use of detention, and use of coercion as last resort', has met with objections from human rights activists. The 2016 EP study, 'The Implementation of the Common European Asylum System', observes that the Eurodac proposal relies on the principle of coercion, and criticises it as seeking 'quick fixes' to save the Dublin system rather than attempting to address its reported fundamental deficiencies.

[Statewatch](#), as well as other [commentators](#), heavily criticise coercive fingerprinting of migrants, with the only potential exception being for children and pregnant women. The EU's Agency for Fundamental Rights ([FRA](#)) finds it 'difficult to imagine a situation where the use of physical or psychological force to obtain fingerprints for Eurodac would be justified'. The European Council on Refugees and Exiles (ECRE) [observes](#) that 'taking fingerprints is not necessarily a condition for applying the Dublin Regulation, since other circumstantial evidence can also be used'. In line with the practice in some countries which already use other methods of identification, such as [multispectral imaging](#), the new proposal provides for use of facial images in addition to fingerprinting.

Moreover, allowing detention of migrants who refuse to be fingerprinted also raises concerns. Article 8(3)(a) of the recast [Reception Conditions Directive](#), in force since 20 July 2015, specifically permits the use of detention to determine or verify the identity or nationality of an applicant. The proposal for a Reception Conditions Regulation, presented on 13 July 2016, goes even further by adding a new grounds for detention. The new Article 8(3)(c) specifies that 'in case an applicant has been assigned a specific place of residence but has not complied with this obligation, and where there is a continued risk that the applicant may abscond, the applicant may be detained ...'. Previously, ECRE had [noted](#), regarding the 2013 Eurodac system, that it only contains information on the applicant's set of fingerprints and sex, which on their own do not allow the applicant's identity or nationality to be established or verified, and found the use of detention for that purpose unnecessary. However, should the new Eurodac Regulation be adopted, this argument would lose its validity as the database would also store additional information, such as names, nationalities, place and date of birth, travel document information and EU asylum application number.

### **Legislative process**

The legislative proposal ([COM\(2016\) 272](#)) was published on 4 May 2016. It falls under the ordinary legislative procedure ([2016/0132/COD](#)). In the European Parliament, the proposal has been assigned to the Civil Liberties, Justice and Home Affairs Committee where initial discussions have been held in committee. The rapporteur, Monika Macovei (ECR, Romania), published her [draft report](#), which now awaits committee decision, in late January 2017. The rapporteur has suggested amendments to the text of the proposal by extending the scope of the regulation to stateless persons in addition to third-country nationals, adding an option to make queries based on alphanumeric data, and simplifying and broadening Europol's access to the database.

The Council has achieved significant progress in the examination of the proposal, in line with the [three-track approach](#) suggested by the Slovak Presidency, which set the CEAS

reform as a priority. The proposal for the recast Eurodac Regulation alongside the proposal for the EU Agency for Asylum regulation were the first to be examined.

At its meetings on 26 May, 14 June, 14 July and 11 October, the Asylum Working Party held detailed discussions on the proposal. The Justice and Home Affairs (JHA) Counsellors examined compromise suggestions from the Presidency at their meetings on 11 and 23 November and 5 December 2016. Delegations expressed broad support for the objectives of the proposal to extend its scope by including the possibility for Member States to store and search data belonging to persons who are not applicants for international protection so that they can be identified for return and readmission purposes. The issue of law enforcement access to Eurodac was discussed at the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) meeting on 13 September, Friends of Presidency meeting on 11 October and by the JHA Council on 13 October 2016. On 30 November and 7 December, outstanding issues were examined in Coreper.

On 9 December 2016, the Council endorsed a [mandate for negotiations](#) with the European Parliament on the recast of the Eurodac Regulation.

While Slovenia has a parliamentary scrutiny reservation, some other delegations also indicated they still have reservations on certain parts of the text. Member States' delegations raised the following issues in the course of the discussions:

- Some Member States have recommended that the Eurodac database should include copies of travel or identity documents, including a photo, to make the identification of third-country nationals easier during the return process. As this would entail additional costs, the option is being assessed by eu-LISA, which will communicate the results for further discussion.
- The Slovak Presidency proposed to include the option to search Eurodac on the basis of alphanumeric data. Since the practical, technical and financial implications of this option need further analysis, certain delegations did not agree with the proposal, which was therefore excluded from the Council's partial general approach.

Ministers agreed the text on the understanding that some parts may need to be revisited in the light of the discussion on the other elements of the CEAS reform as well as of the discussion on the interoperability of information systems. On the basis of this mandate, the presidency will be able to start negotiations with the European Parliament as soon as the latter has adopted its position.

### EP supporting analysis

- EPRS At a Glance on '[Fingerprinting migrants: Eurodac Regulation](#)'
- EPRS Briefing on '[Reform of the Dublin System](#)', February 2017
- EPRS Implementation Appraisal on '[Regulation 604/2013 \(Dublin Regulation\) and asylum procedures in Europe](#)'
- Policy Department C Study on '[Internal border controls in the Schengen area: is Schengen crisis-proof?](#)'
- Policy Department C Study on '[The Reform of the Dublin III Regulation](#)'
- Policy Department C Study on '[The Implementation of the Common European Asylum System](#)'

### Other sources

[Eurodac system](#) for the comparison of fingerprints of applicants for international protection and for identifying illegally staying third-country nationals or stateless persons; requests for the comparison with Eurodac data. Recast, European Parliament, Legislative Observatory (OJEU).

### Endnotes

<sup>1</sup> [Explanatory note on the 'Hotspot' approach](#), European Commission, 2015.

<sup>2</sup> Kindt, E. J. (2013), Privacy and Data Protection Issues of Biometric Application: A Comparative Legal Analysis, p. 360.

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# Reception of asylum-seekers – recast directive

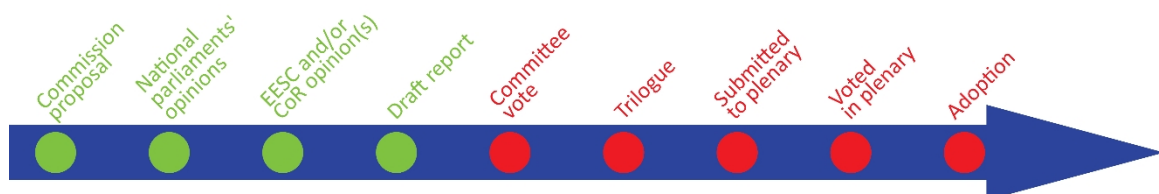
## OVERVIEW

States must treat asylum-seekers and refugees according to the appropriate standards laid down in human rights and refugee law. The current migration crisis revealed wide divergences in the level of reception conditions provided by Member States. While some are facing problems in ensuring adequate and dignified treatment of applicants, in others the standards of reception provided are more generous. This has led to secondary movements of asylum-seekers and refugees and has put pressure on certain Member States.

The aim of the proposed recast directive, which would replace the current Reception Conditions Directive, is to ensure greater harmonisation of reception standards across all Member States. In doing so, applicants for asylum could experience similar treatment as regards reception conditions provided in EU Member States.

## Proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2016) 465 of 13.7.2016
<i>Rapporteur:</i>	Sophia in 't Veld (ALDE, the Netherlands)	2016/222(COD)
<i>Shadow rapporteurs:</i>	Salvatore Domenico Pogliese (EPP, Italy) Iliana Iotova (S&D, Bulgaria) Cornelia Ernst (GUE/NGL, Germany) Bodil Valero (Greens/EFA, Sweden) Gilles Lebreton (ENF, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Vote on draft report in LIBE Committee	



## Introduction

Since the adoption of the [European Agenda on Migration](#) in May 2015, the European Commission has been implementing measures to complete the Common European Asylum System (CEAS). The system provides common minimum standards for the treatment of asylum-seekers and is based on rules determining the Member State responsible for examining an application for international protection ([Dublin Regulation](#)), common standards for asylum procedures ([Asylum Procedures Directive](#)), recognition and protection of beneficiaries of international protection ([Qualification Directive](#)) and reception conditions ([Reception Conditions Directive](#)).

In April 2016, the European Commission presented a [communication](#) on the CEAS, which identified some weaknesses, notably the different treatment of asylum-seekers across Member States. In order to address those differences and improve the functioning of the CEAS, the Commission adopted [first](#) and [second](#) packages of legislative proposals, including a revision of the Reception Conditions Directive. Its aim is, among others, to further harmonise reception conditions in the EU and thereby ensure more equal treatment of asylum-seekers, prevent asylum-seekers from moving between Member States, and avoid 'asylum shopping' whereby asylum-seekers choose the Member State with the highest protection standards for their application. This should ensure more even distribution of asylum-seekers across the EU.

## Context

According to the [recommendations on reception standards For asylum-seekers in the European Union](#), developed by the United Nations Refugee Agency (UNHCR), reception conditions refer to the treatment of asylum-seekers by a country from the moment they apply for asylum, and include access to information at the border, humane conditions in refugee centres, legal counselling, education, medical care, employment, timely asylum procedures, and freedom of movement. States can choose what forms and kinds of support they will offer to asylum-seekers. These may range from 'in kind' support, such as accommodation, food and health care, to financial payment or work permits to allow self-sufficiency. However, despite states' wide discretionary powers, asylum-seekers' human dignity and rights must be protected and their situation must, in all circumstances, be 'adequate for the country in which they have sought asylum'.

International and regional legal instruments oblige states to treat asylum-seekers and refugees in accordance with relevant human rights and refugee law standards. Article 25 of the Universal Declaration of Human Rights ([UDHR](#)) recognises everyone's right to a standard of living adequate for the health and well-being of themselves and of their family, including food, clothing, housing and medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)) recognises the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The International Covenant on Civil and Political Rights ([ICCPR](#)) provides standards for the exercise of civil rights, including protection against arbitrary detention and torture, and the right to recognition everywhere as a person before the law.<sup>1</sup>

The [Charter of Fundamental Rights of the European Union](#) is one of the tools at EU level that protects asylum seekers' human rights. Reception conditions should, among other things, be consistent with provisions relating to the prohibition of torture, inhuman or

degrading treatment, the right to liberty and security, the right to privacy and family life, and the right to an effective remedy. In addition, the [European Social Charter](#) guarantees a broad range of human rights with respect to everyday essential needs related to employment and working conditions, housing, education, health, medical assistance and social protection.

### Existing situation

#### **Directive 2013/33/EU laying down standards for the reception of applicants for international protection**

The current EU legislation that applies in the field is [Directive 2013/33/EU](#). This directive, adopted on 26 June 2013 and applicable since 21 July 2015, is a recast of a previous Council Directive 2003/9/EC and aims at providing dignified and more harmonised standards of living of applicants for international protection in the EU. However, it allows Member States to introduce more favourable provisions as long as they are compatible with the Directive (Article 4).

The Directive applies to all third-country nationals and stateless persons who apply for international protection anywhere in the Member States, including at the border, in territorial waters or in transit zones (Article 3(1)). It applies during all stages and types of procedures concerning applications for international protection (Recital 8), including to asylum-seekers pending transfer under the Dublin Regulation.

The Directive ensures that applicants have access to [material reception conditions](#), which include housing, food, clothing and a daily allowance (Article 2(g)), as well as access to health care, employment and medical and psychological care. It also provides grounds for Member States to reduce or, in exceptional and duly justified cases, withdraw those material reception conditions (Article 20).

The Directive also foresees clear rules and grounds for [detention](#) of applicants, according to which detention should be in line with fundamental rights, based on an individual assessment and only possible if other, less coercive alternative measures cannot be effectively applied (Article 8). It also restricts the detention of vulnerable persons, in particular minors (Article 11), and includes guarantees such as access to free legal assistance and information in writing when lodging an appeal against a detention order (Article 9). It also introduces specific reception conditions for detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10), and an obligation for Member States to take appropriate measures to prevent gender-based violence when providing accommodation (Article 18(4)).

The Directive includes an obligation for Member States to conduct an individual assessment to identify the special reception needs of [vulnerable persons](#) (Article 22). Member States shall pay particular attention to [unaccompanied minors](#) (Article 24) and victims of torture (Article 25) and ensure that vulnerable asylum-seekers can access psychological support. It also provides rules on the qualifications of the representatives of unaccompanied minors (Article 24).

To enhance self-sufficiency and integration, applicants for international protection have a right to access the labour market, at the latest nine months after lodging their application (Article 15(1)). Member States can, however, restrict access for reasons of labour market policy and give priority to Union citizens and EEA nationals, as well as legally resident third-country nationals (Article 15(2)).



The Directive does not apply to the Schengen associated states, or the United Kingdom (UK), Ireland and Denmark, although the UK continues to apply the 2003 Reception Conditions Directive.

**Infringement procedures**

Member States had to transpose the Directive and communicate their transposition measures by 20 July 2015. On 23 September 2015, the European Commission sent [letters of formal notice](#) to 19 Member States for neglecting to communicate the national measures taken to fully transpose the Reception Conditions Directive. On 10 February 2016, the Commission issued [reasoned opinions](#) against some Member States for failing to notify the Commission of their transposition measures, following the letters of formal notice sent in September 2015.

**Situation in the Member States**

While the current Directive provides for some degree of convergence between Member States' standards as regards reception conditions for asylum-seekers, much divergence remains, resulting to some extent from the discretion current asylum legislation allows Member States in implementing the Directive, and from the [pressure](#) on the reception capacity in some Member States.

The EU Fundamental Rights Agency ([FRA](#)) provides regular [updates](#) on fundamental rights in Member States most affected by new arrivals. Its 2016 [report](#) states that increased number of arrivals of asylum-seekers put significant strain on domestic asylum systems in countries of first arrival, countries of transit, and the main countries of destination. The report mentions in particular: inadequate housing, such as overcrowded temporary facilities; desperate and deteriorating conditions at the borders; and overcrowded and inadequate reception facilities. Inadequate reception facilities in some Member States expose certain groups of asylum-seekers to risks of sexual and gender-based violence. The report also focuses on the specific needs of children, stating that children are often accommodated in adult facilities; that unaccompanied children continue to be detained; and that there are delays in appointing guardians.

A 2016 [report](#) prepared by the European Council on Refugees and Exiles ([ECRE](#)) as part of the asylum information database ([AIDA](#)), which documents the conditions for reception of refugees and asylum-seekers in 17 Member States, shows that considerable increase in the number of asylum-seekers has placed reception capacities under strain for the majority of Member States. Member States face difficulties in adapting to higher reception demand, shortage of reception space, substandard living conditions, overcrowding, and difficulties in opening up new reception places.

According to a 2016 [study](#), commissioned by the European Parliament, reception conditions represent a very difficult field of harmonisation, as prospects in some Member States remain better than in others. The study shows that the reception conditions vary significantly between Member States, which triggers secondary movements and consequently prevents the implementation of any distribution mechanisms. In addition, there are also major challenges in terms of the number of reception places available in the Member States, which to some extent results from poor contingency planning and the failure to readily adapt to increasing reception needs.

A 2014 [report](#) by the European Migration Network ([EMN](#)) on the organisation of reception facilities for asylum-seekers in 23 Member States shows considerable differences between Member States in terms of type of facilities and actors involved in

the provision of reception. In addition, although special reception needs for vulnerable persons are taken into account by Member States, there is wide diversity as to how those needs are satisfied in practice.

#### **The case of Greece**

Based on judgements of the European Court of Human Rights ([ECtHR](#)) and the Court of Justice of the European Union ([CJEU](#)), which identified systemic deficiencies in the Greek asylum system, including in terms of reception conditions, in 2011 the Member States suspended the transfer of applicants to Greece under the Dublin Regulation. According to this Regulation, the country of arrival is, in most cases, identified as responsible for the asylum application. Greece remains the main EU country of first entry from the [Eastern Mediterranean route](#) and has come under pressure after the closure of the [Western Balkans route](#). In addition, the [relocation schemes](#), intended to relieve Greece of this pressure, have not yet been fully implemented by Member States.

The European Commission has issued several recommendations calling on Greece to continue its efforts to ensure that reception conditions for asylum applicants meet the standards of the current Reception Conditions Directive. In the [latest](#) of 8 December 2016 it recommended the gradual resumption of the Dublin transfers to Greece for applicants who have entered Greece irregularly from 15 March 2017 onwards, or for whom Greece is responsible from 15 March 2017 under other Dublin criteria.

#### **The changes the proposal would bring**

The [proposal](#) for a recast of the Reception Conditions Directive, presented on 13 July 2016, introduces substantial changes with the aim of further harmonising reception conditions in the EU, reducing incentives for secondary movements, and increasing applicants' self-reliance and prospects for integration.

Article 17(a) thus establishes that applicants are not entitled to material reception conditions (excluding necessary health care and subsistence and basic needs) when they are irregularly present in a Member State other than the one in which they are required to be present. In connection to this provision, the proposal requires Member States, where necessary, to assign applicants a residence in a specific place (Article 7) and link that residence to the right to material reception conditions (Article 7(2)). On this basis, Member States shall, where necessary, oblige applicants to regularly report to the authorities in case of risk of absconding (Article 7(3)).

The definition of family members in Article 2(3) and of material reception conditions in Article 2(7) are extended and include family relations formed after leaving the country of origin but before arrival on the territory of the Member State and non-food items, such as sanitary items, respectively.

As regards unaccompanied minors, Member States must, within five working days, assign a guardian to represent and assist those minors (Article 23). This is consistent with the EP's desire to protect and fulfil the needs of vulnerable groups.

The detention of applicants continues to be justified only when it proves necessary, based on individual assessment and if other, less coercive, alternative measures cannot be applied effectively. However, according to the proposal, applicants may be detained if they do not reside in the assigned place and when there is a risk they might abscond (Article 8(3)(c)).

The time limit for access to the labour market is reduced from nine to six months from lodging the application, when a decision on the asylum application has not been taken (Article 15(1)(1)). Member States can grant access no later than three months if the application is well-founded, and can refuse access if the application is likely to be unfounded (Article 15(1)(2)). The proposal also foresees that, after receiving access to the labour market, applicants should be entitled to equal treatment with nationals of Member States (Article 15(3)) in terms of working conditions, education and vocational training, freedom of association and affiliation, recognition of professional qualifications and social security. Member States can however limit those rights as regards family benefits and unemployment benefits.

The proposal also requires Member States to take reception standards and indicators developed by EASO (Article 27) into account and to draw up and update contingency plans to ensure adequate reception in cases of disproportionate pressure (Article 28).

### Advisory committees

The Committee of the Regions considered the Commission proposal in its [opinion](#) on the reform of the common European asylum system (package II), adopted on 8 February 2017. It proposes to make absconding, with an absence for more than one month, a reason to reduce allowances. However, the Committee suggests only to reduce, not to withdraw allowances in cases of non-fulfilment of the applicant's obligations. According to the Committee, the proposal should also avoid setting binding deadlines as regards the appointment of a 'guardian'. The Committee also recommends the Commission to reconsider the provision in Article 17(a) whereby applicants do not have the right to any material assistance in Member States other than the Member State responsible. The Committee says the possibility of providing limited material assistance to an applicant who justifies their absence on grounds of necessity or force majeure should be maintained. It also calls for a commitment by the EU and its Member States to support, including financially, local authorities that help to guarantee dignified standards of living for all applicants.

The European Economic and Social Committee discussed the proposal in its [opinion](#) on the second CEAS reform package, adopted at the Committee's December 2016 plenary session. The Committee disagrees with the approach of excluding, reducing, withdrawing or replacing reception conditions, and instead supports a positive approach based on incentives in order to prevent secondary movements. While it welcomes the reduction of the time limit for access to the labour market from nine to six months, it calls for applicants from safe countries of origin to be given the right to such access in order to avoid discrimination on the basis of nationality. The Committee stresses the need to eliminate conditions on the right of access to employment, social security and social assistance and to ensure an absolute right of minors to education. It also calls for other family members, such as siblings and other relatives to be included in the directive in line with the Dublin regulation proposal.

### National parliaments

Half of the Member States' national parliaments have initiated a process of scrutiny. The Italian Senate sent a [reasoned opinion](#), stating a violation of the subsidiarity and proportionality principles, while the [Czech Senate](#) and [Romanian Chamber of Deputies](#) have initiated political dialogue with the Commission over their concerns with the

proposal. The deadline for the [subsidiarity check](#) in national parliaments was 10 November 2016.

### Stakeholders' views

*This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.*

In April 2015, UNHCR issued [comments](#) regarding certain provisions of the current directive. The UN Refugee Agency welcomed the guarantees and procedural safeguards concerning detention, vulnerable people and applicants with special reception needs, which have also been maintained in the new proposal. UNHCR also issued recommendations, which the Commission took into account in the current proposal, such as that access to the labour market be granted within six months following the date the application was lodged and that Member States should recognise relationships that were formed during or after flight, among others.

UNHCR also expressed several concerns regarding provisions, which have been left unchanged in the current proposal. They include the possibility to detain an applicant for international protection in order to decide on his right to enter the territory, provisions that Member States may, for reasons of labour market policies, give priority to legally resident third-country nationals and that they may reduce, or withdraw in exceptional cases, reception conditions in the event of a subsequent application.

As regards the current proposal, the European Council on Refugees and Exiles (ECRE) issued similar [observations](#). It stated that provisions on exclusion of applicants who engage in secondary movements from an entitlement to reception conditions, and punitive restrictions in case of non-compliance with obligations, should be deleted. According to ECRE, several existing and proposed grounds for detention are incompatible with the EU Charter of Fundamental Rights, and the detention of persons with special reception needs should be explicitly prohibited. The organisation, however, welcomed the introduction of contingency plans as well as the improvements of the mechanism for identification of special reception needs.

The [Robert Schuman Foundation](#) stresses that harmonisation of reception conditions, as foreseen by the proposal, might not necessarily prevent secondary movements, as these are often the result of the existence of established diaspora and Member States' varying degrees of economic attractiveness. While the Migration Policy Group sees some positive developments for integration of applicants, the proposal's sanction system is said to risk delaying and categorically excluding potentially large numbers of asylum-seekers from receiving integration support. [International Rehabilitation Council for Torture Victims](#) issued comments on the proposed directive, focusing on applicants with special needs. It expresses concerns regarding sanctions for those who do not comply with obligations and regarding restrictions or withdrawal of reception conditions. It states that torture victims must be exempt from detention and that applicants with special reception needs should always have access to full reception conditions, including rehabilitation. It also supports the obligation for systematic and timely assessment of special reception needs.

### Legislative process

#### European Parliament

In the European Parliament, the proposal was assigned to the LIBE Committee under the rapporteurship of Sophia in 't Veld (ALDE, the Netherlands). The rapporteur presented

her [draft report](#) on 18 January 2017. The draft report agrees with the recast of the existing directive but considers that further harmonisation is necessary.

As regards reducing secondary movements the rapporteur disagrees with punitive measures, as proposed by the Commission, and instead proposes incentive measures, such as the provision of high quality reception conditions at the same level throughout the EU. The report also deletes the possibility to provide a lower standard of reception conditions, and limits the use of detention – which should only be possible with the highest safeguards and under the strictest conditions.

Furthermore, the rapporteur supports equal treatment of asylum applicants and EU nationals regarding working conditions, education, vocational training and recognition of diplomas, as stated in the proposal. However, she proposes access to language courses and the labour market for applicants from day one of the application, in order to increase their self-reliance and integration in the host society. She also deletes the possibility of using labour market tests.

The rapporteur also welcomes the specific rules for applicants with special needs, but stresses that further measures are necessary to protect their fundamental rights, including through quick identification of their needs, training of personnel, child-friendly reception conditions and access to necessary healthcare.

### **Council**

On 14 October 2016, the Council took note of the state of play of the examination of the proposal on the basis of a [progress report](#) prepared by the Presidency. The main concerns raised by delegations during the examination of the proposal included:

- certain definitions including 'family members', 'guardian', 'material reception conditions', 'risk of absconding';
- the deadline for Member States to fully inform the applicant of any benefit or the obligations relating to reception conditions;
- the grounds for Member States to provide applicants with a travel document for serious humanitarian or other imperative reasons;
- the shortened deadline for Member States to ensure that applicants have effective access to the labour market;
- the equal treatment with nationals when recognising diplomas, certificates and other evidence of formal qualifications;
- the insufficient sanctions for applicants who do not cooperate;
- the obligation to systematically assess whether an applicant has special reception needs;
- the deadline for appointing a guardian to represent and assist unaccompanied minors;
- the obligation for Member States to take into account operational standards on reception conditions and indicators developed by the new EU Agency for Asylum;
- the obligation for Member States to draw up, and regularly update, contingency plans;
- the date for the transposition of the directive.

### EP supporting analysis

- [Towards a reform of the Common European Asylum System, European Parliament](#), EPRS, May 2016.
- [Regulation 604/2013 \(Dublin Regulation\) and asylum procedures in Europe](#), European Parliament, EPRS, April 2016.
- [Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#), European Parliament, EPRS, December 2015.
- [Reception of female refugees and asylum-seekers in the EU case study Belgium: in-depth analysis](#), European Parliament, Policy Department C, May 2016.
- [Reception of female refugees and asylum-seekers in the EU case study Germany: study](#), European Parliament, Policy Department C, January 2016.
- [The Reform of the Dublin III Regulation](#), European Parliament, Policy Department C, June 2016.
- [The Implementation of the Common European Asylum System](#), European Parliament, Policy Department C, May 2016.

### Other sources

[Reception of applicants for international protection. Recast](#), European Parliament, Legislative Observatory (OEL).

### Endnotes

<sup>1</sup> International Federation of Red Cross and Red Crescent Societies, '[Guidelines on the reception of asylum-seekers for National Red Cross and Red Crescent Societies](#)', 2001, pp.8-9.

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*Second edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.*



# Common procedure for asylum

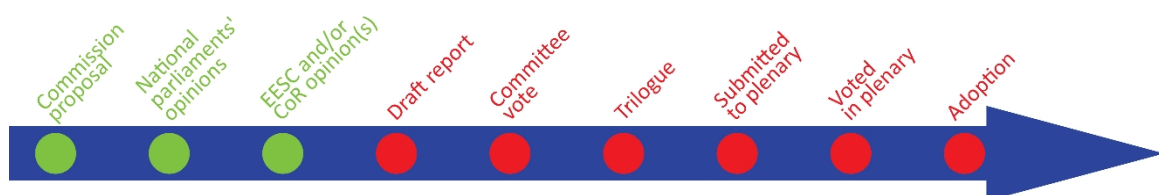
## OVERVIEW

As one of five key acts of the common European asylum system (CEAS), the Asylum Procedures Directive sets out common procedures for Member States for granting and withdrawing international protection in accordance with the Qualification Directive. Following the large influx of asylum-seekers to the European Union since 2014, the directive came under criticism for being too complex and leaving Member States too broad a discretion, leading to differences in length of procedures and procedural guarantees, for example through the use of accelerated procedures and safe country lists.

As part of the reform of the CEAS, on 13 July 2016, the Commission published a proposal to replace the current directive with a regulation establishing a common procedure for international protection in all Member States. The choice of a directly applicable regulation is expected to bring about full harmonisation of the procedures, ensuring same steps, timeframes and safeguards across the EU.

## Proposal for a regulation of the European Parliament and the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2016) 467 13.7.2016
<i>Rapporteur:</i>	Laura Ferrara (EFDD, Italy)	2016/0224(COD)
<i>Shadow rapporteurs:</i>	Jeroen Lenaers (EPP, the Netherlands) Péter Niedermüller (S&D, Hungary) Ska Keller (Greens/EFA, Germany) Jussi Halla-aho (ECR, Finland) Cecilia Wikström (ALDE, Sweden) Marina Albiol Guzmán (GUE/NGL, Spain)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly ‘co-decision’)
<i>Next steps expected:</i>	Publication of draft report	





## Introduction

As part of the common European asylum system (CEAS), the [Asylum Procedures Directive](#) establishes common standards for procedures aimed at granting and withdrawing international protection, which in the EU context encompasses refugee status and subsidiary protection status. Alongside the [Qualification Directive](#), it sets an EU framework for national authorities who assess applications for asylum, i.e. protection given by a State on its territory to a person who is unable to seek protection in their country for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

While adhering to the same set of standards, national asylum legislations differ in the types of procedures used, the recognition rates for asylum applications and the protection status granted. The Commission, taking note of these divergences and addressing [shortcomings](#) amplified by increased [migratory flows](#) since 2014, announced a reform of the CEAS under its [European agenda on migration](#). On 13 July 2016, the Commission [proposed](#) to replace the current Asylum Procedures Directive with a regulation that would establish a common procedure for international protection in all participating Member States.

## Existing situation

The Asylum Procedures Directive 2013/32/EU, which was recast and is applicable only since 21 July 2015, was aimed at harmonising standards for granting and withdrawing international protection by national authorities, in accordance with the Qualification Directive. However, the current situation is far from harmonised and has been [criticised](#) for being too complex and leaving Member States too broad a discretion to ensure that similar cases are treated alike. Procedures for obtaining and withdrawing international protection currently differ between Member States, for instance as regards the time taken for examining a claim, procedural guarantees provided to applicants, and the use of accelerated and inadmissibility examination procedures.

### *Recognition rates*

One of the most criticised aspects in the functioning of the CEAS is that due to differences in the treatment of asylum applicants and their claims, the system motivates asylum-seekers to travel onward to Member States where their applications might have a higher chance of success. This results in secondary movements within the Schengen area, multiple applications in different Member States, uneven distribution of applications in the EU and ultimately renders the Dublin system unworkable.

[EASO's annual report 2015](#) shows that while EU+ countries (EU Member States, Switzerland and Norway) were relatively similar in terms of Syrian, Albanian and Kosovar applicant recognition rates, there were significant discrepancies between their recognition rates of applicants from countries such as Iraq (from 21 % to 98 %), Afghanistan (14 % to 96 %), Pakistan (2 % to 52 %) and Serbia (0 % to 38 %).

This does not necessarily mean that Member States have a different approach to recognising needs for international protection, although it is true that no EU-wide asylum status exists. The potential for a uniform status for asylum or subsidiary protection was provided after the entry into force of the Lisbon Treaty in 2009 (Article 78(2)(a) and (b) [TFEU](#)), but ultimately was not created in the recast CEAS completed in 2013.

However, EASO noted that the discrepancies in Member States' recognition rates can also be linked to the fact that asylum-seekers' profiles may differ across the EU. For instance,

the number of applications from Syrians – the largest group of applicants in 2015, representing 28 % of all applicants in the EU+ – rose in 21 out of 30 EU+ countries, a rather broad dispersion. In contrast, applicants from Western Balkan countries (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, and Serbia), accounting for 14 % of all asylum applications in EU+ in 2015, predominantly (72 %) applied for asylum in Germany.

#### *Safe country concepts*

Another aspect leading to different recognition rates derives from the differing use of admissibility and accelerated procedures, most notably the safe country concepts. Pursuant to Article 33 of the directive, ‘Member States are not required to examine whether the applicant qualifies for international protection’, where an application is considered inadmissible because the applicant comes from a safe third country or first country of asylum. The provision thus creates an option, not an obligation for Member States to use the admissibility procedure for such applicants.

The directive also permits the use of an accelerated procedure when the applicant comes from a safe country of origin. Article 36 of the directive sets out the criteria but leaves the Member States [discretion](#) to ‘lay down in national legislation further rules and modalities’ on its application. Thus, unsurprisingly, national [safe country of origin lists](#) are homogenous and some Member States (Spain, Italy, Poland and Sweden) do not apply the concept at all. The uneven use of admissibility and accelerated procedures can understandably lead to different recognition rates for similar asylum applications, and motivate asylum-shopping. Unfortunately, aggregated data on the use of admissibility and accelerated procedures in Member States is [not collected](#) systematically, making it difficult to evaluate current practices in light of the new Commission proposal.

#### *Length of procedures*

Under Article 31(3) of the directive, the maximum time limit for processing asylum applications under the regular procedure is six months from ‘lodging of the application’. This evokes the specific steps in the current asylum procedure, differentiating between making an application (expressing the wish) and formally lodging an application. A recent Asylum Information Database (AIDA) [study](#) indicates that, while according to the directive all claims must be registered within three working days and lodged as soon as possible, in practice asylum-seekers often have to wait much longer to be able to formally lodge an application. Moreover, some countries have set timeframes significantly shorter than six months for the regular procedure, although in practice these are often more indicative than binding. This homogeneity increases as regards special, i.e. admissibility, or accelerated procedures. In its proposal, the Commission observes that national time limits to process such claims vary between a few days to five months.

#### **Safe country concepts**

##### **First country of asylum**

Country in which an applicant has received refugee status and can avail him or herself of that protection, or otherwise enjoys sufficient protection from *refoulement*.

##### **Safe third country**

Country through which an applicant transits, which is considered as capable of offering him or her adequate protection against persecution or serious harm.

##### **Safe country of origin**

Country whose nationals may be presumed not to be in need of international protection.

### European Parliament starting position

The European Parliament took a stand on the asylum procedures in its [resolution](#) of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, underlining that common rules for asylum procedures are already included in the CEAS but have not been fully implemented by the Member States. The Parliament stressed that implementation is a key condition for achieving harmonisation and solidarity among Member States, who can, if needed, seek support from the European Asylum Support Office (EASO).

With regard to solidarity, Parliament noted that ‘harmonisation of reception conditions and asylum procedures can avoid stress on countries offering better conditions and are key to responsibility sharing’.

The Parliament observed that the current mechanisms have not managed to ensure a ‘swift access to protection’ and referred to inadmissible applications, subsequent applications, accelerated procedures, and border procedures as examples where the current Asylum Procedures Directive ‘tried to strike a delicate balance between the efficiency of the system and the rights of the applicants’. The Parliament acknowledged the Commission’s proposal for an EU list of safe countries of origin, aiming to replace diverging national lists with one common list to ensure uniform application of the concept. The Parliament warned, nevertheless, that any such list should not affect every applicant’s right for an individual examination of his or her claim for international protection. The Parliament reminded that under Article 3 of the [Geneva Convention](#), Member States have an obligation not to discriminate against refugees on the basis of their race, religion or country of origin.

Regarding detention, Parliament insisted that any form of detention required judicial control and called on Member States to ‘correctly apply the Asylum Procedures and the Reception Conditions Directives in relation to access to detention centres’ when alternatives to detention have been exhausted.

### European Council starting position

The European Council of [18-19 February 2016](#) addressed the migratory challenge by calling for a reform of the CEAS to ‘ensure a humane and efficient asylum policy’.

A month later, the European Council of [17-18 March 2016](#) took note of the Commission communication ‘Next operational steps in EU-Turkey cooperation in the field of migration’, in particular as regards the concepts of ‘first country of asylum’ and ‘safe third country’ and how these could be applied in the context of the [EU-Turkey statement](#) of 18 March 2016.

### Preparation of the proposal

In the European agenda on migration, the Commission listed a key action, under the third pillar, ‘Europe’s duty to protect: a strong common asylum policy’, to establish a CEAS monitoring system and provide guidance to ‘improve standards on reception conditions and asylum procedures’.

On 23 September 2015, the Commission complemented the migration agenda with a [communication](#) ‘Managing the refugee crisis’, setting out priority actions to be taken within six months. In this communication, the Commission explicitly called on Member States ‘to take urgent steps to transpose, implement and fully apply’ CEAS instruments, including the Asylum Procedures Directive.

The Commission assessed the progress of the priority actions in its [communication](#) of 10 February 2016, publishing the state of play of the implementation of EU law in [Annex 8](#). The Commission signalled 58 new [infringement](#) decisions taken after 23 September 2015, listing all letters of formal notice and reasoned opinions, including 21 on the transposition and implementation of the Asylum Procedures Directive.

On 16 March 2016, the Commission published a [communication](#) 'Next operational steps in EU-Turkey cooperation in the field of migration', ahead of the EU-Turkey statement of 18 March 2016. In its communication, the Commission discussed the legal safeguards for returning persons in need of international protection to Turkey. Pursuant to the [European Convention on Human Rights](#) and the [EU Charter of Fundamental Rights](#), every case needs to be treated individually following the procedures laid out in the Asylum Procedures Directive. Therefore, the Commission assessed, there is 'no question of applying a "blanket" return policy, as this would run contrary to these legal requirements'. At the same time, the Commission took note of the option to apply, in certain circumstances, an accelerated procedure without examining the substance of the application. These claims would be considered inadmissible on the premise that the applicant has already been recognised as a refugee or would have sufficient protection in a 'first country of asylum', or has come to the EU from a 'safe third country' that can provide effective access to protection.

On 6 April 2016, the Commission [announced](#) a reform of the CEAS. While admitting that proper application of the existing rules is essential to manage the situation, the Commission referred to the conclusions of the European Council of [February](#) and of [March](#) 2016, which called for reform to enhance both the protection and efficiency of the current system.

As part of the second implementation package presented on 13 July 2016, the Commission proposed the adoption of a regulation replacing the current Asylum Procedures Directive. The Commission explained that full harmonisation can best be achieved through a regulation, a directly applicable legal instrument that can be relied upon by individuals.

### **The changes the proposal would bring**

In order to address the differences identified in the treatment of asylum applications, the proposal intends to establish a common procedure for international protection that would apply in the same way across the EU. In addition, not only would the procedure be the same in every Member State, but the intention is to make it 'faster, simpler and more effective'. The Commission explains that the new regulation will provide the necessary instructions for national authorities to decide on cases and also guarantee the same safeguards for asylum applicants throughout the EU. Some of the main changes introduced by the proposal are the standardised use of the safe country concepts, the mandatory inadmissibility procedure and the shortening of procedures.

#### *Safe countries and inadmissibility*

Article 36 of the current directive leaves Member States the discretion to set rules for the application of the safe country of origin concept and return the applicant to the country considered safe for the purposes of national asylum law. As discussed above, countries currently apply the safe country concepts to a diverging degree.

In the proposed regulation, this option is replaced by an obligation, pursuant to which national authorities 'shall assess the admissibility of an application', and 'shall reject an

application as inadmissible' if it is lodged by an applicant entering the EU from a first country of asylum or a safe third country. This wording does not leave discretion to the Member States and creates an obligation to reject those applications as inadmissible.

It is worth noting that countries of first entry are now required to assess the admissibility of a claim before processing the application on its merits, putting it ahead of any determination-of-responsibility procedure. Another procedural step is thus added, as well as a further obligation on the country of first entry.

Determining the new admissibility procedure's fit with the current Dublin logic might take reference from the recent [Mirza](#) judgment of the Court of Justice of the EU (CJEU). In the decision, delivered on 17 March 2016, the CJEU took a permissive view of the current application of the safe third country concept, stating that 'the Dublin III Regulation allows Member States to send an applicant for international protection to a safe third country, irrespective of whether it is the Member State responsible for processing the application or another Member State'. The decision specified that this right may also be exercised by a Member State after it has accepted that it is responsible for processing the application and within the context of the procedure to take back applicants.

Moreover, Article 38(2)(a) of the current directive requires Member States to set rules requiring a sufficient connection between the applicant and the third country, to ensure that it would be reasonable for him or her to return to that country. However, as [appears](#) in the light of the EU-Turkey statement, the Commission seems to have lowered the 'sufficient connection' threshold to accommodate the agreement.

Articles 44(3) and 45(3) of the proposed regulation include a safeguard that allows the applicant a right to challenge the application of the first country of asylum or the safe third country concept based on his or her 'particular circumstances', refuting the presumption of safety. The provisions specify that this could be done when the applicant lodges the asylum application or during the admissibility interview (which is maintained as per the current system). However, considering that the examination of the admissibility claim must be completed within ten working days, it leaves very little time for the applicants to substantiate their case.

#### *Shorter procedures*

The Commission proposes to maintain the duration for a regular procedure at six months from lodging the claim. Under the current system this can exceptionally be extended by a maximum of nine months in case of increased pressure to the national asylum system or in highly complex cases. The new proposal shortens this time limit significantly, suggesting three months for an exceptional prolongation. The regulation also introduces the option of suspending the procedure should any changes in the country of origin appear (to be assessed regularly by the proposed European Agency for Asylum, as specified in the proposed [qualification regulation](#)). In such cases, the maximum duration of the procedure would be 15 months.

For accelerated and inadmissibility procedures, which currently differ significantly across Member States, the Commission proposes to set the maximum durations of two and one month respectively.

#### **Advisory committees**

The Committee of the Regions adopted its [opinion](#) 'Reform of the Common European Asylum System – Package II and a Union Resettlement Framework' (rapporteur: Vincenzo Bianco, Italy) on 8 February 2017. The opinion advised increasing the maximum

length of the regular procedure from nine months to one year. It urged limiting authorities' discretion in refusing legal assistance, providing legal assistance to minors at all interviews with the asylum authorities, and ensuring the right to remain for applicants who did not receive legal assistance during their first application. The Committee was clear on the position that it is the duty of the responsible Member State under Dublin rules, not the country of first entry, to examine applications on their merits, also taking into account applicants' preferences and ties which would facilitate their integration in a Member State. Regarding the third country concepts, the opinion asked for the definition of 'first country of asylum' to be clarified, and stressed that a 'mere transit through a third country on the way to the EU ... cannot be considered sufficient grounds for returning the applicant to the country in question'.

The European Economic and Social Committee (EESC) addressed reform of the Asylum Procedures Directive in its [opinion](#) on 'Common European Asylum System Reform Package II' (rapporteur José Antonio Moreno Díaz, Spain), which was adopted at the plenary session of 14 December 2016 by 211 votes for, 2 against and 5 abstentions. The EESC recalled that setting rules in the form of a regulation should not lead to a reduction in protection standards. The Committee recommended eliminating the 'automatic application of the concepts of safe third country, first country of asylum and safe country of origin' and ensuring the same procedural guarantees for all procedures.

### National parliaments

The subsidiarity deadline for the national parliaments was 4 November 2016. By December 2016, several national parliaments or chambers had completed their [scrutiny](#), and five (Czech Chamber of Deputies, German Bundesrat, Italian Senate, Portuguese Assembleia da República, and Romanian Chamber of Deputies) had initiated political dialogue.

### Stakeholders' views

*This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.*

Stakeholders have expressed support for the objective of achieving more harmonisation through the adoption of a regulation, but have also warned against lowering the overall standards and raised concerns regarding some elements of the proposal.

The [Meijers Committee](#), while agreeing that replacing the directive with a regulation could lead to greater harmonisation and allow asylum-seekers to rely directly on its provisions, fears that the change of legal instrument may lower standards currently in place in some Member States. The Committee observes that this is especially probable since one of the objectives stated by the Commission is to reduce 'pull factors'. The Committee is also critical of the proposed wider use of accelerated procedures, especially for applicants from 'safe countries of origin'. It recalls that the CJEU has ruled that this is only possible when asylum-seekers from those countries are allowed to fully exercise the right to seek asylum. The Committee warns against any automatic application of the accelerated procedures, especially when combined with detention, and questions the compatibility of the new procedure with the European Convention on Human Rights. It refers to the risk of violating Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy) of the Convention, especially in the light of the [Sharifi](#) judgment of the European Court of Human Rights.



The European Council on Refugees and Exiles (ECRE) noted, in its [comments](#) on the Asylum Procedures Regulation, that the proposal includes several improvements to the current standards, but also some provisions that raise serious concern. While welcoming the extension of the obligation to provide free legal assistance in Article 15(1) of the proposal, ECRE firmly opposed the application of a 'merits-test' giving Member States the possibility to exclude the provision of free legal assistance and representation where 'the application is considered as not having any tangible prospect of success'. In the same vein, ECRE expressed extreme concern regarding the use of the safe country and admissibility concepts by default. In its earlier report on the admissibility, responsibility and safety in European asylum procedures, ECRE observed that the concepts of admissibility and safe country are currently used in a limited and fragmented way. It argued that since there was no evidence-based knowledge on the use of these concepts, the Commission's proposal to make the use of these concepts mandatory seemed inappropriate. The report emphasised that countries with greater experience in applying the safe country lists, often with judicial guidance, have clarified that mere transit or a short stay in a third country does not amount to a 'sufficient connection' with that country.

A similar view was expressed by the United Nations Refugee Agency (UNHCR) in its [legal considerations](#) on the return of asylum-seekers and refugees from Greece to Turkey under the safe third country and first country of asylum concepts. UNHCR asserted that the 'first country of asylum' concept should only be applied in cases where 'a person has already, in a previous state, found international protection, that is once again accessible and effective for the individual concerned'. As regards the 'safe third country' concept, UNHCR underlined that this applies in situations 'where a person could, in a previous state, have applied for international protection, but has not done so, or where protection was sought but status was not determined'. Both require an individual assessment of the case in accordance with the standards laid down by the 1951 [Geneva Convention and its Protocol](#) to ensure that not only the principle of *non-refoulement* is respected, but that 'sufficient protection' is available and that the third country readmits the person. UNHCR observed that while the directive does not define sufficient protection, an interpretation of the provision in the light of Article 18 of the EU Charter of Fundamental Rights would suggest it 'goes beyond protection from *refoulement*'. Moreover, in its [recommendations](#) to the Slovak Presidency, UNHCR asked the latter to ensure that 'discussions on further harmonisation of the CEAS are aimed at achieving an appropriate level of protection across the EU' and that EASO and the European Commission are more engaged in achieving full compliance with the CEAS in all Member States.

### Legislative process

The legislative proposal ([COM\(2016\)467](#)) was published on 13 July 2016. It falls under the ordinary legislative procedure ([2016/0224\(COD\)](#)). In the European Parliament, the proposal is assigned to the Civil Liberties, Justice and Home Affairs Committee (LIBE) where preparatory work for a draft report is underway. Laura Ferrara (EFDD, Italy) was appointed as the rapporteur. Opinions on the Commission proposal were to be presented by the Committee on Foreign Affairs (AFET) and the Committee on Employment and Social Affairs (EMPL), the latter however decided not to give an opinion.

On [13-14 October 2016](#), the Justice and Home Affairs Council endorsed the three-track approach suggested by the Slovak Presidency for the examination of the recast CEAS instruments, giving first priority to the regulations on Eurodac and the European Union



Agency for Asylum, followed by examination of the remaining CEAS instruments and finally working on the proposal for the Union resettlement framework.

On [8-9 December 2016](#), Justice and Home Affairs ministers discussed the CEAS reform and were briefed by the Slovak Presidency on the state of play of the files.

Work on the Asylum Procedure Regulation is ongoing in the Asylum Working Party, which examined Articles 1-18 of the proposal at its meetings on 8, 21 and 22 November 2016. The working party [noted](#) that there is general support for the aim of further harmonising asylum procedures in the EU, although Member States have also voiced substantive reservations, especially regarding certain aspects linked to the Dublin Regulation and other CEAS reform proposals.

The European Council of [15 December 2016](#) invited the Council to continue work on the CEAS proposals with the aim of achieving consensus on EU asylum policy during the incoming Maltese Presidency.

### EP supporting analysis

European Parliament, EPRS briefing on [European Union Agency for Asylum](#), December 2016.

European Parliament, EPRS briefing on [Reception of asylum-seekers – recast Directive](#), November 2016.

European Parliament, EPRS briefing on [Resettlement of refugees: EU framework](#), October 2016.

European Parliament, EPRS briefing on [Recast Eurodac Regulation](#), October 2016.

European Parliament, EPRS briefing on [European Border and Coast Guard system](#), October 2016.

European Parliament, EPRS briefing on [Reform of the Dublin system](#), September 2016.

European Parliament, EPRS implementation appraisal of [Regulation 604/2013 \(Dublin Regulation\) and asylum procedures in Europe](#), April 2016.

European Parliament, EPRS briefing on [Arbitrary detention of women and children for immigration-related purposes](#), March 2016.

European Parliament, EPRS in-depth analysis on [Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#), December 2015.

European Parliament, EPRS briefing on [EU legal framework on asylum and irregular immigration 'on arrival'](#), March 2015.

European Parliament, Policy Department C study on [The Reform of the Dublin III Regulation](#), June 2016.

European Parliament, Policy Department C study on [The Implementation of the Common European Asylum System](#), May 2016.

### Other sources

[Common procedure for international protection in the Union](#), European Parliament, Legislative Observatory (OEIL).

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*Second edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.*

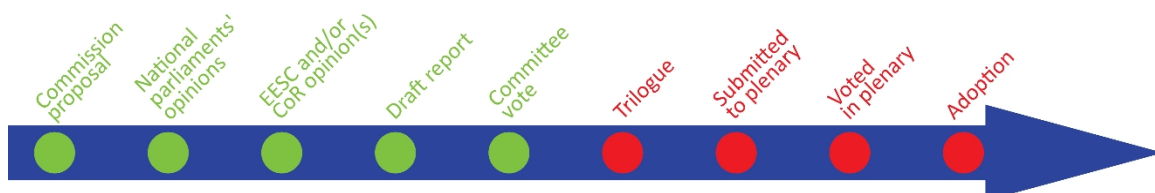
# Safe countries of origin: Proposed common EU list

## OVERVIEW

As part of the European Agenda on Migration, the Commission proposed a regulation on 9 September 2015 to establish a common EU list of safe countries of origin, initially comprising Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey. The aim is to fast-track asylum applications from citizens of these countries, which are considered 'safe' in full compliance with the criteria set out in the Asylum Procedures Directive 2013/32/EU and the principle of *non-refoulement*. Currently, lists are defined at national level and not coordinated, which can lead to different recognition rates of similar asylum applications, and thus create incentives for secondary movements and asylum-shopping.

**Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU**

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2015) 452 9.9.2015
<i>Rapporteur:</i>	Sylvie Guillaume (S&D, France)	2015/0211(COD)
<i>Shadow rapporteurs:</i>	Rachida Dati (EPP, France) Jussi Halla-Aho (ECR, Finland) Martina Anderson (GUE/NGL, UK) Jean Lambert (Greens/EFA, UK) Bodil Valero (Greens/EFA, Sweden) Kristina Winberg (EFDD, Sweden) Gilles Lebreton (ENF, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Continuation of negotiations in trilogue	



## Introduction

On 9 September 2015, the European Commission adopted its second [implementation package](#) under the [European Agenda for Migration](#) in response to the unprecedented [migrant flows](#) arriving in the European Union. The new package includes a [proposal for a regulation](#) establishing an [EU common list of safe countries of origin](#), as agreed by the [European Council](#) of 25-26 June 2015. Ireland and the UK may choose to opt in, while Denmark will not participate in the adoption of the regulation. The proposed list would initially comprise seven countries: Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.

Although the notion of a 'safe country of origin' is not regulated in the [1951 Convention Relating to the Status of Refugees](#) it is not a new concept on the international scene. It [can theoretically](#) refer to the automatic exclusion from refugee status of nationals originating in safe countries of origin, or it can raise a presumption of safety that those nationals must rebut. The concept of a 'safe country of origin' (SCO) is used in migration management to define countries which, based on their **stable democratic system and compliance with international human-rights treaties**, are presumed safe to live in. Based on this presumption, the recast [Asylum Procedures Directive](#) 2013/32/EU, applicable since 21 July 2015, permits the use of an accelerated procedure, without prejudice to the final decision, when the applicant is from a 'safe country of origin'. The Asylum Procedures Directive and the recast [Qualification Directive](#) 2011/95/EU set standards for determining which asylum applicants qualify for international protection. These Directives rely on the refugee law requirements set out in the [1951 UN Convention \(Geneva Convention\) and the 1967 Protocol](#), which define a refugee as a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country'. The definition of refugees was intended to exclude internally displaced persons, economic migrants, victims of natural disasters, or persons fleeing violent conflict but not subject to discriminatory persecution.<sup>1</sup>

However, procedures for returning asylum-seekers who do not meet the criteria must not violate the principle of [non-refoulement](#) enshrined in Article 33 of the Convention, which stipulates that 'no Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

The Geneva Convention and its Protocol relating to the status of refugees currently [bind](#) 142 contracting states, including all EU Member States. Turkey and all Western Balkan states except Kosovo are signatories to both the Convention and the Protocol.

The concept of safe country of origin should not be confused with the notion of safe third country. The first applies to a country whose own citizens are not persecuted, whereas

As stated by President Juncker in his [State of the Union Speech in 2015](#): 'we also need to separate better those who are in clear need of international protection and are therefore very likely to apply for asylum successfully; and those who are leaving their country for other reasons which do not fall under the right of asylum. This list will enable Member States to fast track asylum procedures for nationals of countries that are presumed safe to live in ... the list of safe countries is only a procedural simplification. It cannot take away the fundamental right of asylum for asylum seekers from Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia, and Turkey. But it allows national authorities to focus on those refugees which are much more likely to be granted asylum, notably those from Syria.'

the latter refers to a transit country considered safe for provision of international protection.

## Context

The proposals for enhanced migration management were presented in September 2015, at the [peak of migrant arrivals](#) in the EU. The violent conflicts in Syria and Iraq, and instability and poverty in parts of Africa forced millions of people to flee their homeland in search of protection and a decent life elsewhere, many of them in the EU. According to [Eurostat](#), the number of applications for international protection rose from 431 000 in 2013 to close to 1.3 million in 2015 in the EU. At the end of 2016, the number of [asylum applicants](#) in the EU remained close to the 1 million mark. This placed a heavy burden on national asylum systems, causing [long delays](#) and a backlog of applications.

According to the United Nations Refugee Agency ([UNHCR](#)), during mass movements of refugees, usually as a result of conflicts or generalised violence as opposed to individual persecution, there is no – nor ever will be – capacity to conduct individual asylum interviews for everyone who has crossed a border. Nor is it usually necessary, since in such circumstances it is generally evident why they have fled. As a result, such groups are often [declared](#) ‘prima facie’ refugees. The current migration flows are [mixed](#), comprising both economic migrants and asylum-seekers. In reality, these groups can and do overlap, and this grey area is often exacerbated by the inconsistent methods with which asylum applications may be processed in the Member States. This has pointed to a need to better coordinate practices in order to avoid clear discrepancies within the EU when processing similar asylum applications.

## Existing situation

### *National lists of safe countries of origin*

At the moment, SCO lists are set by Member States who may apply the concept in accordance with the criteria laid down in Article 38(1) of the Asylum Procedures Directive. The concept is defined in Article 36(1) of the directive, whereas Article 36(2) leaves Member States [discretion](#) to 'lay down in national legislation further rules and modalities' on its application. Currently there is no obligation to use the concept. Some Member States (Greece, Spain, Italy, Poland and Sweden) do not apply it at all. The Commission in its proposal takes note that SCO lists are currently used in at least 12 Member States. Other countries either do not differentiate between asylum applications in this respect, as is the case in Lithuania, or apply the concept without a designated SCO list, as in the Netherlands. The Asylum Information Database (AIDA) [2014/2015 Annual Report](#) suggests that the administrative practice may exist in countries with no formal SCO list.

In countries where the concept is used, the lists are homogenous (see Table 1) and, as pointed out in the AIDA [2013/2014 Annual Report](#), no country is on the safe list of all EU Member States. Turkey is currently defined as a safe country of origin only by [Bulgaria](#). Kosovo, while currently recognised as safe by seven Member States, is not party to the Geneva Convention and its Protocol.

France [withdrew](#) Kosovo from its safe list as of 10 October 2014 but [reintroduced](#) it on 9 July 2015. This was enabled by the updated definition of a ‘safe country of origin’ in the new law on asylum adopted on 29 July 2015. The insertion was [challenged](#) in the French Council of State, which gave a [ruling](#) on 30 December 2016 upholding the list, finding that Kosovo ensures satisfactory protection against persecution and serious harm.

Germany as the main destination country, receiving [72 %](#) of the Western Balkan inflow in 2015, implemented several changes in legislation, including [adding](#) Western Balkan countries to the national SCO list (Serbia, Macedonia, and Bosnia and Herzegovina on 19 September 2014, and Albania, Kosovo and Montenegro on 24 October 2015), prioritising the processing of their applications and accelerating return procedures.

**Table 1: Western Balkan countries and Turkey on EU Member States' SCO lists**

	Austria	Belgium	Bulgaria	Czech Rep.	France	Germany	Ireland	Latvia	Luxembourg	Malta	Slovakia
Albania	•	•	•	•	•	•			•		
Bosnia and Herzegovina	•	•	•	•	•	•			•		
former Yugoslav Republic of Macedonia	•	•	•	•	•	•			•		
Kosovo	•	•		•	•	•			•		
Montenegro	•	•	•	•	•	•			•		•
Serbia	•	•	•	•	•	•			•		
Turkey			•								

Source: EMN [Ad-Hoc Query](#), Statewatch [information note](#), AIDA [country reports](#).

The divergence can be explained by national differences in conducting safety assessments with regard to countries of origin. Currently, the Asylum Procedures Directive only sets the requirement of regular review in its Article 37. The new proposed Asylum Procedures Regulation would centralise the assessment, leaving the review of the situation in third countries to the Commission, assisted by the European Union Agency for Asylum, which is proposed to be created through extending the mandate of the European Asylum Support Office (EASO). While the proposals are pending, EASO **published in November 2016** new [country of origin reports](#) on the Western Balkan countries and Turkey to feed into the ongoing discussion and national assessments.

#### *Accelerated procedure*

Article 31(8)(b) of the Asylum Procedures Directive allows Member States to use a procedure that is accelerated and/or conducted at the border or in transit zones, when an applicant is from a safe country of origin. The Commission has consistently stressed that the fast-track approach should not compromise the obligation to examine applications case by case. Granting protection to a citizen from a country that is included in the SCO list is possible, but in that case the applicants needs to rebut the presumption of safety and demonstrate their individual need for protection.

Whereas the time limit for processing an application under a regular procedure is six months, extendable for up to 21 months, there are no minimum time limits for an accelerated procedure. Article 31(9) of the Asylum Procedures Directive requires Member States to set 'reasonable' time limits for the first instance decision to be reached, and Article 39(2) leaves Member States discretion to set time limits for applicants to exercise their right to an effective remedy. Not surprisingly, the time frames for accelerated first and second instance asylum procedures vary significantly.<sup>2</sup> The

Commission [observes](#) that the national time limits to process claims using accelerated procedures currently vary from between a few days to five months, whereas all the basic procedural rights, including the right to a personal interview still apply. The Court of Justice of the EU (CJEU) in its *Samba Diouf* [judgment](#) (2011) took a stand that a 15-day time limit is sufficient 'to prepare and bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved'. In countries such as Bulgaria or Malta, where the maximum duration of accelerated procedure is 3 and 6 days respectively, the time frame left to applicants to prepare their case is extremely short and may not be sufficient. On the other hand, in most countries there are [no procedural consequences](#) if the time limit for accelerated procedure is not respected. Unfortunately, data on the use of accelerated procedures in Member States is [not collected](#) systematically, making it difficult to evaluate current practices. The AIDA [2014/2015 Annual Report](#) draws attention to the risks of legal uncertainty and arbitrariness, as well as to the gap between acceleration as set out in law and in practice.

#### *Recognition rates*

The divergences in national SCO lists may lead to different recognition rates for asylum applications, especially for Western Balkan applicants which as a group have one of the lowest rates across the EU – just over 2% in 2015 according to [EASO](#). In EU and associated countries where their recognition rates were higher (such as Italy, Switzerland and the UK), they were mostly granted humanitarian protection rather than refugee status. Regardless of low chances of recognition, Western Balkan nationals are increasingly applying for international protection in the EU: the number almost [doubled](#) in 2015 compared to 2014 (from 110 000 to 201 405), making them the second-largest group of applicants after Syrians, and ahead of Afghans and Iraqis. EASO takes note that, compared to other nationalities, the number of [repeat applications](#) is also particularly high for Western Balkan applicants.

#### **Parliament's starting position**

The European Parliament in three key resolutions of [17 December 2014](#), [10 September 2015](#) and [12 April 2016](#), reiterated:

- the need for a holistic EU approach to migration which would open up more legal channels for economic migration to counteract irregular migration, while bringing about a fairer system of burden-sharing across the EU regarding humanitarian protection in compliance with [Article 80 TFEU](#);
- its commitment to open borders within the Schengen area, at the same time ensuring effective management of external borders;
- acknowledged the Commission proposal for a Union list of safe countries of origin, amending the Asylum Procedures Directive;
- observed that if such a list became obligatory for Member States it could, in principle, be an important tool for facilitating the asylum process, including return; regretted the current situation in which Member States apply different lists, containing different safe countries, hampering uniform application and incentivising secondary movements; and,
- underlined that any list of safe countries of origin should not detract from the principle that every person must be allowed an appropriate individual examination of his or her application for international protection.



## Council and European Council starting position

In view of the implementation of the European Agenda on Migration, the European Council of [25-26 June 2015](#) stressed the need for cooperation with countries of origin and transit to accelerate readmission negotiations. On 10 July, the Luxembourgish Presidency [suggested](#) to ensure rapidly a coordinated approach between Member States on the designation at national level of third countries as safe countries of origin.

Possible asylum misuse by citizens of Western Balkan countries that benefit from visa-free travel was addressed by the [Justice and Home Affairs Council](#) on 20 July 2015, which came to the [conclusion](#) that Western Balkan countries should be defined as safe countries of origin to enable fast-tracking of their asylum applications.

The European Council of [15-16 October 2015](#) welcomed the [EU-Turkey Draft Action Plan](#), which Commission President Juncker presented to Turkish President Erdoğan on 5 October 2015. Member States confirmed their willingness to increase cooperation with Turkey. On 29 November 2015, at the [meeting](#) of EU Heads of State or Government with Turkey, a decision was reached to 'activate' the [Joint Action Plan](#). The parties issued a [joint statement](#) to confirm their commitments. Turkey undertook to implement readmission agreements and immediately increase its cooperation with the EU on irregular migrants. The EU committed €3 billion for the refugee facility for Turkey. At the meeting of the EU Heads of State or Government with Turkey on 7 March 2016, the parties identified the [principles](#) for cooperation, in particular 'to resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the EU Member States, within the framework of the existing commitments'. During the [European Council](#) meeting of 18 March 2016, an [EU-Turkey Statement](#) was agreed with Turkish Prime Minister Ahmed Davutoğlu on stopping the flow of irregular migration via Turkey to Europe, breaking the business model of smugglers and offering migrants an alternative to putting their lives at risk. The plan would remain conditional on Turkey's progress in fulfilling the requirements of its [Visa Liberalisation Roadmap](#).

## Preparation of the proposal

Establishing a minimum common EU list was previously attempted in 2005, but at the time the Member States failed to reach agreement on the countries to include in the list. This option, included in the 2005 Asylum Procedures Directive, was subsequently challenged by the European Parliament in the Court of Justice of the European Union (CJEU), which [annulled](#) it for lack of procedural conformity.

This time, the Commission is using the option for 'Union rules leading to a common asylum procedure in the Union' provided for in recital 4 of the recast Asylum Procedures Directive. The legal basis stated in the proposal is Article 78(2)(d) TFEU, providing for common procedures for the granting and withdrawing of uniform asylum and subsidiary protection status. The choice of countries was based on information provided by the European External Action Service (EEAS); Member States, EASO, the Council of Europe, UNHCR and other relevant international organisations. The proposal builds on the premise that the majority of the suggested countries are already included in national SCO lists. However, [commentators](#) point out that Turkey was added to the list in 2015 on the Commission's initiative in preparation for closer cooperation that was sealed by the EU-Turkey statement reached on 18 March 2016.

The Commission states in its explanatory memorandum that there has been a sharp increase in asylum applications submitted by citizens of the proposed countries. All

except Turkey and Kosovo have been [exempt](#) from EU visa requirements since 2010. In its [assessment report](#) published in February 2015, the Commission deplored that the number of asylum applications from the visa-free countries had been increasing constantly since visa liberalisation, while the recognition rates in the EU and associated countries continued to fall, leading to a large number of manifestly unfounded claims. The overarching aim of the new regulation would be to improve migration management, especially through reducing abuse of national asylum systems as well as the [Common European Asylum System](#) (CEAS).

In 2016, the Commission also proceeded to [reform](#) of the CEAS, presenting new proposals for all its instruments. On 13 July 2016, the Commission proposed to replace the Asylum Procedures Directive with a regulation. In addition to choosing a directly applicable instrument that does not require transposition in national law, one of the most significant changes of the [proposal](#) (COM(2016) 467) concerns precisely the use of the safe country concepts, which are to become mandatory in all Member States. The Commission explains that the aim is to achieve a fully harmonised designation of safe countries of origin, proposed by the Commission on the basis of assessments conducted by the proposed [European Union Agency for Asylum](#). In line with this, Article 50(1) of the proposal includes a 'sunset' clause that would allow Member States to retain national designations of safe countries of origin for up to five years after the entry into force of the Asylum Procedures Regulation.

In the explanatory memorandum with the proposal, the Commission states that 'the EU common list of safe countries of origin should be an integral part of this draft Regulation' and, for this reason, the new text incorporates the proposal for a regulation establishing an EU common list of safe countries of origin, including the same list of countries. The Commission envisages the next steps as follows.

- Once the co-legislators have agreed on the proposal for establishing an EU common list of safe countries of origin, it should be adopted. The Commission has set it among its 34 [priority pending proposals](#) to be adopted in 2017.
- The text of the new regulation would then be incorporated in the Asylum Procedures Regulation as it is adopted.
- After that, the regulation establishing an EU common list of safe countries of origin should be repealed.

### The changes the proposal would bring

The Commission has proposed to establish the EU list of safe countries so that all Member States would use procedures linked to this concept. The seven countries were chosen because their nationals account for around 17 % of the total number of applications lodged in the EU. Other countries may be added in the future after a thorough assessment by the Commission and adoption by the two co-legislators.

Moreover, the seven countries were selected as they are considered, in principle, to fulfil the requirements set out in the [Asylum Procedures Directive](#). [Rankings of countries](#) of origin based on recognition rate (from low to high) and for which at least 1 000 applicants were registered in 2014 show that all six Western Balkan countries can be found in the top 10. The majority of these countries have also been designated as candidate countries by the European Council, fulfilling, again in principle, the [Copenhagen criteria](#) guaranteeing democracy, the rule of law, human rights and respect for and protection of

minorities. Candidates for EU membership can thus *a priori* be considered 'safe'. The Commission asserts that it will regularly review the situation in the countries concerned, and where necessary can propose to temporarily suspend countries from the list. The purpose of establishing the list of safe countries is to separate better those who are in clear need of international protection and are therefore very likely to succeed in their asylum applications, and those who are leaving their country for other reasons which do not fall under the right of asylum. This list will enable Member States to fast-track asylum procedures for nationals of countries that are presumed safe to live in. As the Commission President, Jean-Claude Juncker [explained](#), 'the presumption of safety must certainly apply to all countries which the European Council unanimously decided meet the basic Copenhagen criteria for EU membership – notably as regards democracy, the rule of law, and fundamental rights'. It would also apply to the other potential candidate countries in the Western Balkans, in view of their progress made towards candidate status. President Juncker reiterated his support for this proposed regulation again in his [State of the Union speech](#) in 2016.

The common European list is also intended to reduce discrepancies among Member States in processing asylum claims. The list is meant to help eliminate potential 'loopholes' and deter secondary movements of applicants for international protection, who may currently seek to reach a specific Member State based on a perceived higher chance of being successfully granted protection. The 'safe countries of origin' list could also allow for swifter returns of those applicants who do not qualify for asylum. The establishment of the list should deter attempted abuses of the [Common European Asylum System](#) and allow Member States to devote greater resources to providing adequate protection to persons in genuine need.

**Table 2: Comparison of countries to be included in the common safe country of origin list**

Country	ECTHR rulings of violations of European Convention on Human Rights in 2014	Percentage of well-founded asylum applications in 2014	EU candidate country
Albania	4 of 150 cases	7.8%	✓
Bosnia and Herzegovina	5 of 1 196	4.6%	
former Yugoslav Republic of Macedonia	6 of 502	0.9%	✓
Kosovo	not party to ECHR	6.3%	
Montenegro	1 of 447	3.0%	✓
Serbia	16 of 11 490	1.8%	✓
Turkey	94 of 2 899	23.1%	✓

Source: European Commission [fact sheet](#) of 9 September 2015.

## Advisory committees

The [Committee of the Regions](#) (CoR) adopted an [opinion](#) on the European Agenda on Migration on 3 December 2015. The Committee insisted that while EU candidate and pre-candidate countries are required to meet the EU's human rights standards to qualify as a 'safe country of origin', the situation of vulnerable groups in particular needs to be carefully monitored. This would allow the identification of legitimate protection needs due to persecution on the grounds of, inter alia, gender, sexual orientation, gender identity or ethnicity. In its opinion [Partnership Framework with third countries on Migration](#), adopted in plenary on 8 February 2016, the CoR agrees that the EU needs to reduce the possibilities for irregular migration and strengthen its readmission and return policies with third countries. Among the 16 partner countries, CoR emphasises the importance of Libya, Jordan, Lebanon, Tunisia and Niger. To reduce the number of people

taking dangerous trips to Europe, it recommends offering conditional support for setting up hotspots in third countries. These would be managed by the EU and international bodies (UNHCR) and would assess the merits of asylum applications on the ground.

The [European Economic and Social Committee](#) adopted an [opinion](#) on the proposed regulation on 10 December 2015. The Committee welcomed the proposal and endorsed the initiative to establish a common EU list of safe countries of origin to offset the current differences between national lists. However, the Committee emphasised that the specific criteria for considering a country 'safe' for the purposes of the Qualification Directive and the Asylum Procedures Directive should be 'established in a more practical and secure way'. Moreover, the Committee considers that it might be premature to draw up a list of specific countries considered safe for those purposes. Regarding safeguards to applicants, the Committee insists that the concept has important practical consequences, such as the possibility to use accelerated procedures. The Committee recommends 'requiring a substantiated decision on the relevance of applying the concept' in each case after an individual assessment.

### National parliaments

The [subsidiarity deadline](#) was 9 November 2015. No national parliament submitted a reasoned opinion on the proposal but political dialogue was opened by Czech Republic, Italy and Romania.

### Stakeholders' views

According to some [observers](#), the 'safe country of origin' concept still bears a number of substantial conceptual and procedural risks. Criteria such as the number of European Court of Human Rights ([ECtHR](#)) rulings finding violations, the [Copenhagen criteria for EU accession](#) or even the fact that a particular country is considered 'safe' by several Member States do not necessarily guarantee that the safety criteria in Annex I to the recast [Asylum Procedures Directive](#) are met. The Commission approached this issue by assessing the existence of human rights protection in the national legal orders.

A balance between efficiency and respect for the right to seek asylum needs to be sought: statistics show that there are still thousands of applicants from these states who demonstrate a genuine need for protection. The Commission's own [explanatory memorandum](#) notes that in all the states concerned, there was persecution on lesbian, gay, bisexual, transgender and intersex (LGBTI) grounds, as well as persecution in some states against Roma, women and children.

The attempted [coup d'état](#) which took place in Turkey in July 2016 and the ensuing instability call however for attention, and an ongoing re-assessment to ensure that all [human rights safeguards and safety](#) are ensured. According to [observers](#), caution needs to be paid before the EU proceeds to conclude a [further agreement similar to the EU-Turkey one](#) with Libya, when it is not yet a politically stable democratic system and cannot as yet guarantee full compliance with international human-rights treaties.

FRA, the [Fundamental Rights Agency](#), in its [opinion](#) presented to the EP's LIBE Committee, points out that designation of safe countries of origin can be a legitimate instrument to facilitate the processing of applications from persons whose claims for international protection are likely to be unfounded. Dealing with these claims in an effective manner can have a positive fundamental rights impact by allowing national asylum systems to focus on other persons whose applications are more likely to be well founded, thereby

contributing to the reduction of processing times (where applicants remain in limbo) for all applicants for international protection. An EU common list of safe countries of origin would, however, need to be accompanied by sufficient safeguards ensuring, in particular, that it is not to the detriment of fundamental rights of persons in genuine need of international protection originating from the countries in question, namely on: (a) ensuring the right to seek asylum, *non-refoulement* and the prohibition of collective expulsion; (b) the right to an effective remedy; (c) non-discrimination; and (d) ensuring rights of children, determining the best interest of unaccompanied minors and the prevention of arbitrary detention of children.

[UNHCR](#) does not oppose the notion of 'safe country of origin' as long as it is used as a procedural tool to prioritise and/or accelerate examination of an application in very carefully circumscribed situations. UNHCR recognises the inherent difficulties in making an assessment of general safety. Displacement situations and general conditions can be volatile in many countries. Moreover, any assessment by states is susceptible to political, economic and foreign policy considerations. UNHCR considers it critical to ensure that: a) each application is examined fully and individually on its merits in accordance with certain procedural safeguards; b) each applicant is given an effective opportunity to rebut the presumption of safety of their country of origin in his or her individual circumstances; c) the burden of proof on the applicant is not increased; and, d) applicants have the right to an effective remedy in the case of a negative decision.

UNHCR's Executive Committee [considers](#) that 'notions such as "safe country of origin" ... should be appropriately applied so as not to result in improper denial of access to asylum procedures, or to violations of the principle of *non-refoulement*'. It has taken the view that SCO practices are permissible, provided that they are rooted in a proper assessment of the country's conditions and do not lead to the automatic rejection of claims from designated countries. UNHCR's approach has been to insist on safeguards, rather than to condemn these practices outright. Moreover, while they remind states of their obligations under Article 3 of the 1951 Convention relating to the Status of Refugees, that is, the non-discrimination guarantee, UNHCR has not argued that SCO practices are invariably discriminatory. In contrast, there is some authoritative opinion questioning the use of SCO mechanisms at all. For instance, the International Commission of Jurists (ICJ) has [expressed its opposition](#) to SCOs in general.

Michael Diedring, Secretary General of [ECRE](#) stated, at the launch of the AIDA [2014/2015 Annual Report](#), that the proposed regulation will enable EU countries to apply accelerated procedures, which in practice often significantly curtail asylum-seekers' rights to appeal a negative decision and to lawfully remain on the territory pending such an appeal. He warned that 'advocating for a common EU approach to "safe countries of origin" therefore runs the risk of a "race to the bottom" in protection standards by standardising presumptions'. [Similar concerns](#) were echoed by Amnesty International as well as Human Rights Watch. Amnesty International's Iverna McGowan [underlined](#) that 'refugee status is determined by individual circumstances, meaning no country of origin can be deemed "safe"'.

[L'Association Européenne des Droits de l'Homme](#) (AEDH), EuroMed Rights and the International Federation for Human Rights (FIDH) have stated that no country may be simply labelled as 'safe', [arguing that](#) the EU Member States will 'institutionalise' a system of refusing their responsibilities to asylum-seekers and international obligations. AEDH wrote, 'We oppose a notion which, we believe, is contrary to the principle of non-discrimination on the grounds of nationality enshrined in international law. We call on the European Parliament and the Council to reject the adoption of this regulation.'

### Legislative process

The proposal, COM(2015) 452, submitted by the Commission on 9 September 2015 was [assigned](#) to the EP Civil Liberties, Justice and Home Affairs (LIBE) Committee on



16 September 2015. On 7 July 2016, the LIBE Committee adopted the [report](#) by Sylvie Guillaume (S&D, France), together with opinions from the Committees on Foreign Affairs Committee (AFET) and Development (DEVE). The LIBE Committee also adopted a mandate enabling the opening of trilogue talks with the Council.

In the report, LIBE Members agreed that the future EU common list of safe countries of origin, which should help Member States to process certain asylum applications faster and more consistently, should replace today's national lists after a three-year transition period. During those three years, EU countries will be able to suggest to the Commission that other third countries be added to the common list, but they would not be allowed to consider as a 'safe country of origin' any country which has been suspended or removed from the European list. The Commission would assess which countries should be included, removed or temporarily suspended from the list.

In the Council, The Luxembourg Presidency suggested [revisions](#) to the Commission's proposal of 9 September 2015, feeding into the Justice and Home Affairs Counsellors meeting on [2 October 2015](#). The Justice and Home Affairs Council of [8-9 October 2015](#) confirmed the need for an effective [return policy](#), which requires cooperation with countries of origin and transit. Additionally, increasing coherence between migration and development policy is being emphasised through the [New Partnership Framework with Third Countries](#) and the series of compacts being concluded to ensure that development assistance helps partner countries manage migration more effectively, and also incentivises them to effectively cooperate on readmission of irregular migrants. Work with the Commission proposal continued in the Asylum Working Party, with Coreper reaching a mandate on 23 March 2016 to open negotiations with Parliament.

Trilogue meetings took place on 13 September and 19 October 2016. The negotiations have been divided into four topics: methodology, means of suspension of country from the list; harmonisation of lists into a single list; and, fundamental rights safeguards. Agreement has been reached so far on the first two sections, but the latter two have been subject to disagreement.

While the co-legislators have agreed on the common list approach, there is no decision yet as to which countries should be on the list. The Parliament and Council agreed to postpone the evaluation of the list until new country information is available, as the Commission's methodology for drawing up the list came under [criticism](#), in particular due to the inclusion of Turkey. On 16 November 2016, the delegations in the Council received a [letter](#) from José Carreira, Executive Director of EASO, containing new country of origin reports on the seven countries listed in the proposal. These new reports prepared by EASO are intended to feed into the on-going trilogue negotiation process, which should resume in early 2017.

## EP supporting analysis

- European Parliament, EPRS Briefing on [Common procedure for asylum](#), January 2017
- European Parliament, EPRS briefing on [Vulnerability of unaccompanied and separated child migrants](#), December 2016
- European Parliament, EPRS Briefing on [European Union Agency for Asylum](#), December 2016
- European Parliament, EPRS Briefing on [Growing impact of EU migration policy on development cooperation](#), October 2016
- European Parliament, EPRS Briefing on [Reform of the Dublin system](#), September 2016
- European Parliament, EPRS Briefing on [Public expectations and EU policies - The issue of migration](#), June 2016
- European Parliament, Policy Department C study on [The Implementation of the Common European Asylum System](#), May 2016
- European Parliament, EPRS briefing on [Arbitrary detention of women and children for immigration-related purposes](#), February 2016
- European Parliament, EPRS briefing on [EU legal framework on asylum and irregular immigration 'on arrival'](#), March 2015
- European Parliament, Policy Department C study on [New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection](#), October 2014

## Other sources

[International protection: EU common list of safe countries of origin](#) / European Parliament, Legislative Observatory (OEIL).

## Endnotes

<sup>1</sup> The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: a commentary, Andreas Zimmermann, Jonas Dörschner, Felix Machts, Oxford, Oxford University Press, 2011.

<sup>2</sup> Marcelle Reneman, [Speedy Asylum Procedures in the EU](#): Striking a Fair Balance Between the Need to Process Asylum Cases Efficiently and the Asylum Applicant's EU Right to an Effective Remedy, International Journal of Refugee Law, 2014.

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*Second edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.*



# European Border and Coast Guard system

## SUMMARY

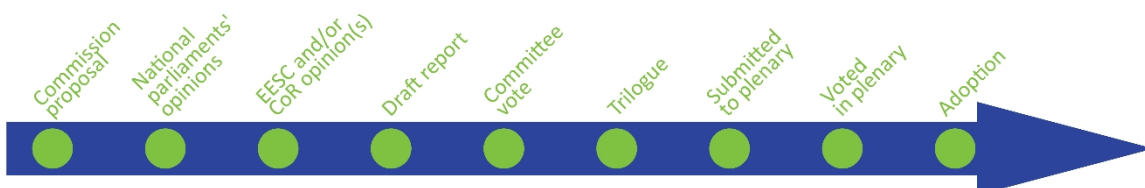
In December 2015, the European Commission proposed setting up a European Border and Coast Guard System (EBCGS), building on the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (Frontex). The proposal would introduce a supervisory role and a 'right to intervene' in situations at the border requiring urgent action; expand Frontex's operational tasks and its prerogatives on processing personal data; and reinforce fundamental rights and transparency safeguards.

Commentators and stakeholders had raised concerns on respect for fundamental rights, division of competences between the EU and Member States and the adequacy of the suggested individual complaint mechanism. The text agreed by the EP and Council expands the Agency's prerogatives on return operations, on migration management, the fight against cross-border crimes, and search and rescue operations. Fundamental rights safeguards and the Agency's accountability vis-à-vis the EP and Council have been strengthened. If a Member State opposes a Council decision to provide assistance, putting the Schengen area at risk, other EU countries may temporarily reintroduce internal border controls.

With the regulation signed on 14 September, the new European Border and Coast Guard was launched on 6 October 2016.

## Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Decision 2005/267/EC

Committee responsible:	Civil Liberties, Justice and Home Affairs	COM(2015) 671 of 15.12.2015
Rapporteur:	Artis Pabriks, EPP, Latvia	<i>procedure ref.:</i> 2015/0310(COD)
Procedure completed	Regulation (EU) 2016/1624 <a href="#">OJ L 251, 16.9.2016, pp. 1-76</a>	



This updates an earlier edition, of 30 August 2016: [PE 586.647](#).

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**Introduction**

The need to reduce deficiencies in external border management and unpredicted migratory flows contributed to reviving the idea of setting up a European Border and Coast Guard system.

In 2015, detections of [irregular crossings](#) of the external borders reached 1.82 million, more than six times the number of detections reported in 2014. [Data](#) for 2015 indicate that roughly 1.25 million people applied for asylum in EU Member States. This put border authorities under intense pressure, exposing the difficulties they face in adequately performing border controls. Although Greece and Italy have been under particularly intense pressure as the two main entry points (reporting up to 6 000 arrivals per day), for several other Member States, large inflows of migrants and asylum-seekers was a new experience, revealing the complexity of the challenge of managing sudden large flows.

Some Member States adopted a '[wave-through](#)' approach, which led to the creation of a route through the Western Balkans, allowing mixed flows of asylum-seekers and economic migrants to travel across external and internal EU borders. In response, [seven](#) of the 26 Schengen countries have temporarily reintroduced controls on at least some of their borders to manage increasing flows of entrants. In the meantime, Greece has been requested by the [Council](#) to address serious deficiencies in the application of the Schengen *acquis* relating to the management of its external borders, under threat of suspension from Schengen for up to two years, as provided for under Article 26 of the [Schengen Borders Code](#) (SBC). Having assessed that some serious deficiencies in external border control in Greece persist, on 4 May the Commission [proposed](#) that the Council recommends five countries to maintain targeted internal border controls for a further period of six months (Article 29 SBC).

The European Commission's communications on a [European Agenda on Migration](#) and on [Managing the refugee crisis](#) called for the strengthening of the mandate and resources of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ([Frontex](#)), which currently coordinates and supports national border-management agencies, and the development of a fully operational European Border and Coast Guard system. In December 2015, in line with these guidelines, the Commission came forward with the [proposal for a regulation on the European Border and Coast Guard \(EBCG\)](#) as part of a package of measures aimed at ensuring the protection of the EU's external borders. According to the communication, the purpose of the regulation is twofold: improving the management of migration and ensuring internal security within the Union, while safeguarding freedom of movement within the EU. The Communication '[Back to Schengen: A Roadmap](#)' urged the legislator to prioritise the adoption of this proposal by June at the latest, so that it can become operational during the summer. The Commission also called on Member States and Frontex to start the necessary preparations to set up the new system already, by identifying the necessary human and technical resources.

**Existing situation**

Frontex became operational on 3 October 2005 on the basis of [Regulation \(EC\) 2007/2004](#). According to its mandate, the agency is tasked with the promotion of an integrated approach to border management, through conducting risk analyses, drawing up training curricula for border

guards, and carrying out research. Frontex also coordinates joint border-management operations and organises return operations.

Frontex's role has been strengthened over time, notably in 2007 when the Rapid Border Intervention Teams (RABIT) were [established](#), setting out the responsibilities of guest officers (national border guards deployed outside their own Member State). In a crisis situation, a Member State can request the deployment of RABITs for assistance to its border guards for a limited period of time. The [mechanism](#) has rarely been used, however, it was deployed in 2010, on the Greek-Turkish border.

In 2011, Frontex's role was further reinforced by the creation of European Border Guard Teams (EBGT) for joint operations and rapid border interventions ([Regulation No 1168/2011](#)). At the same time, Frontex's surveillance capabilities were enhanced with the creation of a Situational Centre which provides a regularly updated picture of the EU's external borders and migration situation, and through the establishment of a [European Border Surveillance System](#) (Eurosur).

Amid concerns over its capacity to comply with fundamental rights throughout its operations, Frontex endorsed a Fundamental Rights Strategy and a Code of Conduct, which sets out behavioural standards for all persons participating in Frontex activities. The agency also established a Fundamental Rights Officer (FRO) and a consultative forum to contribute to fundamental-rights monitoring. Currently, Frontex is also allowed to process personal data concerning persons suspected of cross-border criminal activities, of facilitating illegal migration activities or of human trafficking activities.

Frontex may conclude working arrangements on the management of *operational cooperation with the authorities of third countries*. Pursuant to the 2011 Regulation, the Agency can send liaison officers to third countries and launch technical assistance projects in third countries.

More recently, Frontex has played a leading role in the creation of [‘hotspots’](#) and [Migration Management Support Teams](#). These teams bring together the European Asylum Support Office (EASO), Europol and Frontex – in partnership with national authorities – to identify, screen and register migrants on entry into the EU, and to organise return operations for those who have no right to stay. Frontex is the lead agency in the EU Regional Task Forces, headquartered in Catania for the ‘hotspots’ in Italy, and in Piraeus for those in Greece.

## The changes the proposal brings

The Commission legislative proposal is based on Article 77(2)(b) and (d) and Article 79(2)(c) of the Treaty on the Functioning of the EU ([TFEU](#)). The proposal put forward by the Commission set out a number of elements in order to reinforce the role of the new European Border and Coast Guard Agency (hereinafter the Agency), in comparison to the current role of Frontex. The main new elements of the proposal were: introduction of a supervisory role and a 'right to intervene' in situations at the border requiring urgent action; expansion of Frontex's operational tasks and its prerogatives on processing personal data; and reinforcement of fundamental rights and transparency safeguards.

According to the [final text](#) agreed in trilogue, the Agency's activities will include support to Member States in the field of **migration management, the fight against cross-border crimes and search and rescue operations**. It stipulates that the Agency shall implement the European integrated border management as a shared responsibility.

While maintaining the same legal personality as Frontex, the new agency would see its **mandate expanded**. Its tasks will include: supporting Member States in the field of migration management, the fight against cross-border crimes (such as migrant smuggling, trafficking in human beings and terrorism), and search and rescue operations; establishing an operational and technical strategy for the implementation of integrated border management at EU level; overseeing the functioning of border control at the external borders; providing increased operational and technical assistance to Member States through joint operations and rapid border interventions; ensuring

the practical execution of measures in situations requiring urgent action at the external borders; and providing technical and operational assistance in support of search and rescue operations for persons in distress at sea.

Experts from the staff of the Agency will be deployed as **liaison officers** to monitor all EU Member States with external borders. Each liaison officer may cover up to four geographically close countries, to ensure greater cooperation between the Agency and the Member States concerned.

**Fundamental rights** accountability has been reinforced through introducing specific reference to the rights of children and of people with disabilities.

In comparison with the initial Commission proposal, the Agency will have a greater role in **returning migrants** to their country of origin. The Agency will assist Member States in organising joint return operations and returns of third-country nationals who are the subject of return decisions issued by a Member State, without entering into the merits of return decisions issued by the Member States, and in full respect of fundamental rights. In addition, the Agency will assist Member States in the acquisition of travel documents for return, in cooperation with the authorities of the relevant third countries. The Agency, however, will not be involved in the provision of information to Member States on third countries of return.

In the final text, if a Member State faces disproportionate migratory challenges, at particular areas on its external border, characterised by large influxes of mixed migratory flows, the Agency shall, at the request of a Member State or on its own initiative, organise and coordinate **rapid border interventions** and deploy European Border and Coast Guard Teams, from a rapid-reaction pool, as well as technical equipment. Rapid border-intervention teams will support national authorities for a limited period of time, when immediate response is required and where such an intervention would provide an effective response.

Throughout the legislative procedure, the conditions for the Agency's **right to intervene**, which was a key feature of the Commission proposal, have progressively been clarified. When a Member State does not comply (within a set time limit) with a **binding decision** of the Management Board of the Agency to address vulnerabilities in its border management, or in the event of specific and disproportionate pressure at the external border that would put the functioning of the Schengen area at risk, the Council, on the basis of a proposal from the Commission, may rapidly adopt a decision requiring the Agency to provide assistance, and the Member State concerned to cooperate with the Agency. The Commission must consult the Agency before making such a proposal and inform the European Parliament, without delay. Furthermore, if a Member State opposes a Council decision to provide assistance, the other EU countries may temporarily reintroduce internal border checks (so that the current regulation amends the relevant provisions of the Schengen Borders Code).

Regarding the Agency's staff and equipment, a rapid-reaction pool of border guards and other relevant staff in the Member States, amounting to a minimum of 1 500 persons will be set up. The deployment of teams from the rapid-reaction pool will be complemented by additional European Border and Coast Guard Teams where necessary. The Agency shall make available **forced return monitors**, upon request, to participating Member States to monitor the correct implementation throughout return operations and interventions.

Member States shall ensure that authorities likely to receive applications for international protection have the relevant information, and that their personnel receive the necessary level of training appropriate to their tasks and responsibilities, and instructions to inform applicants as to where and how applications for international protection may be lodged. The Agency is requested to develop specific **training tools**, including specific training in the protection of children.

**Transparency, accountability** and adherence to the principle of **non-refoulement** have been reinforced throughout the legislative process. According to the final text, the Agency shall be as transparent as possible about its activities, without jeopardising the attainment of the objective of its operations. It shall make public information on all of its activities, and should ensure that

the public and any interested party are rapidly given information with regard to its work. The European Parliament will be kept informed through regular reporting. Parliament's role has also been strengthened in the procedure for selecting the **Agency's Executive Director**. It is also clarified that the possible existence of an arrangement between a Member State and a third country does not absolve the Agency or the Member States from their obligations under Union or international law, in particular as regards compliance with the principle of *non-refoulement*.

The individual complaint mechanism in case of fundamental rights violations has been strengthened. Complainants shall be informed in writing about the admissibility and merits of a complaint. In case of non-admissibility decisions, the reasons for the decision and the suggestion of further options for addressing their concerns, shall be provided to the complainant. The relevant Member State shall report back to the Fundamental Rights Officer as to the findings and follow-up to a complaint within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow up on the matter if no report has been received from the relevant Member State. The Agency shall also include in its annual report information on the complaints mechanism.

The Agency will cooperate with the European External Action Service, EASO, Europol, the European Union Agency for Fundamental Rights, and Eurojust. The European Fisheries Control Agency (EFCA) and the European Maritime Safety Agency (EMSA) shall coordinate their operations at sea and share information.

An independent external evaluation of the results achieved by the Agency will be launched three years after the date of entry into force of the Regulation, and will be repeated every four years thereafter.

## Preparation of the proposal

The [Stockholm programme](#) called for examination of the feasibility of a European System of Border Guards, a call that was repeated five years later in the [June 2014 European Council conclusions](#). A [feasibility study](#) done for the Commission, and presented to the LIBE Committee in 2014, proposed a three-phase approach. Those phases would start with greater interaction between EU Member States and the EU in terms of cooperation and decision-making, then shifting decision-making to the EU level, and finally setting up an entirely new agency composed of border guards under an EU-level command structure. Furthermore, an external [evaluation](#) of Frontex's activities between July 2008 and July 2014 was published in June 2015, and discussed in the Frontex Management Board. On the basis of the evaluation, [recommendations](#) were made regarding possible modifications to the Frontex Regulation. These included: strengthening Frontex's operational response capacities through increased funding and staffing; expanding Frontex's coordination role on Joint Return Operations, risk analysis, cooperation with third countries; and consideration of a European System of Border Guards.

In 2012, in a [Special Report](#) on an own-initiative inquiry, the European Ombudsman assessed how Frontex implemented its obligations and mechanisms concerning fundamental rights. Although underlining positive developments, the Ombudsman noted the absence of any procedure to deal with complaints on breaches of fundamental rights in Frontex activities. The idea of setting up such a procedure has been supported by the European Parliament.

The 2013 report '[Frontex: human rights responsibilities](#)', by the Parliamentary Assembly of the Council of Europe, found that further steps were needed to enhance democratic scrutiny by the EP as well as public accountability, through an independent monitoring system and an effective complaints mechanism. Human-rights training for those involved in operations was a priority.

In a 2014 [Special Report on the External Borders Fund](#) (EBF), the European Court of Auditors (ECA) recommended that, to support the work of Frontex, the legislator should consider making the assignment of relevant Internal Security Fund (ISF) co-financed assets to Frontex's technical equipment pool obligatory, and the Commission should provide Frontex with relevant, comprehensive and timely information regarding EBF/ISF implementation in Member States.



The European Data Protection Supervisor (EDPS) submitted an [opinion](#) on 18 March 2016, in which he highlighted several data protection concerns and called for further improvements of the proposed text to ensure full compliance with data protection principles. The EDPS considers that a separate assessment of the necessity and proportionality of the processing activities envisaged for each purpose of the proposal (management of migration and ensuring internal security) should be carried out.

### Parliament's starting position

The European Parliament has discussed the future of Frontex on several occasions, including during a debate in plenary held on 11 February 2015 and while preparing its resolution of 2 December 2015 on the [Special Report of the European Ombudsman in own-initiative inquiry](#) concerning Frontex. This resolution recommended the inclusion of an individual complaints mechanism in the review of Frontex's mandate.

The EP also [welcomed](#) the plan to provide Frontex with additional resources. However, it called on the Commission to propose a medium and long-term strategy for the agencies in the field of justice and home affairs, including [EASO](#), [Europol](#), [Eurojust](#), and [CEPOL](#). The EP [report on the situation in the Mediterranean and the need for a holistic EU approach to migration](#), underlined the role of Frontex in search and rescue operations and expressed willingness to negotiate with the Council on the proposal.

### Council and European Council

The European Council's [conclusions](#) of October 2015 welcomed the Commission's intention to present a package including proposals on a European Border and Coast Guard system. However, they underlined that the distribution of competences under the TFEU and the national competence of Member States should be fully respected. As a follow-up, the Council [conclusions](#) of 9 November 2015 indicated that the existing Frontex [tools](#), including the deployment of [Rapid Border Intervention Teams](#), would be needed to assist Member States concerned by migratory pressures in respecting their 'legal obligation to perform adequate controls ... and increase coordination of actions relating to border management'. At its meeting of [16-18 February 2016](#), the European Council called on the Council and the EP to reach political agreement on the current proposal by July 2016.

### Stakeholders' views

In a [joint briefing](#) on the Commission's proposal, the International Commission of Jurists, the European Council on Refugees and Exiles, and Amnesty International, advocated a clearer division of competence. They warned that a blurring of competences may have stronger implications for the Agency's and Member States' accountability for human rights violations, given the Agency's extended mandate (as compared to Frontex). The three organisations also suggested that the individual complaint mechanism against fundamental-rights violations, should have been more independent and effective at the admissibility, merits and reparation stages.

Similarly, the [UNHCR](#) recommended that the draft regulation should include a clearer, more coherent and pragmatic distribution of responsibilities between the EU and Member States; the strengthening of fundamental rights safeguards and respect of the principle of *non-refoulement*. It also welcomed a stronger focus on preparedness and an enhanced response capacity to address situations requiring urgent action.

Other [commentators](#) noted that expectations for the new agency appeared overestimated in contrast to Member States' limited willingness to contribute. It was also noted that the agency's resources, though increased, remain limited as compared with its mandate and powers, while some aspects of its operations and division of tasks remained unclear in the compromise text.

A [protest](#) organised by the Collective for another migratory policy (Collectif pour une autre politique migratoire), against the adoption of the regulation, was staged outside the EP on 5 July 2016, during the discussion of the text in plenary.

## Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) on the European Commission's proposal during its plenary session on 25-26 May 2016. Although the EESC supported the setting up of a European Border Guard, it suggested omitting the term 'coast' and retaining a civilian police force (rather than military) character. The Committee was also in favour of strengthening the Agency's human-rights guarantees. For instance, it suggested that the Fundamental Rights offer greater protection for unaccompanied minors. The EESC also suggested that a representative of the Committee should become a member of the Consultative Forum.

## National parliaments

The subsidiarity deadline passed on 15 March. Chambers of [national parliaments](#) from 18 Member States have considered the proposal, and while none adopted a reasoned opinion on subsidiarity grounds, a number made substantive comments on the proposal, focused in particular on the procedure for deciding to intervene.

## Parliamentary analysis

The study [The proposal for a European Border and Coast Guard: evolution or revolution in external border management?](#), requested by the LIBE Committee, finds that although the Commission proposal does not amend the fundamental premise of operational cooperation at the external borders, reserving executive enforcement powers to the Member States, the concept of shared responsibility (in the absence of shared accountability) increases fundamental rights concerns.

## Legislative process

In the Council, on 6 April 2016, the Permanent Representatives Committee (Coreper) agreed on the [Council's negotiating position](#), confirming agreement on an overall Presidency compromise, including several points taken on board from the Opinion of the European Data Protection Supervisor, and granted a mandate to the Presidency to start negotiations with the EP as soon as possible.

The [21 April JHA Council](#), endorsed the position agreed in Coreper and stressed the necessity to start preparations for implementation of the future system even before its formal adoption. Coreper also gave mandates to the Presidency to start negotiations on the two related proposals amending the Regulations establishing the European Maritime Safety Agency (EMSA) and the European Fisheries Control Agency (EFCA). With a mandate for negotiations adopted by the LIBE Committee on 30 May, trilogue negotiations were able to start immediately thereafter.

The LIBE [report](#) (rapporteur: Artis Pabriks, EPP, Latvia), adopted on 30 May 2016, suggested a number of amendments on key features of the Commission's proposal, which were retained in the final text, such as the revision of the right to intervene

According to the report, the Agency should not organise return operations to any third country where there are risks of fundamental-rights violations. The need for increased accountability and transparency of the future agency, vis-à-vis Parliament and the general public was also underlined, and the establishment of fundamental-rights safeguards urged.

The European Parliament adopted its [position at first reading](#) on 6 July 2016. As the outcome of the vote reflected the compromise agreement reached between the institutions, the Council was able to adopt the text without amendment. The Presidency proposed to Coreper to use the [written procedure](#) for the adoption of the Regulation, thus enabling the act to be signed during Parliament's September plenary session.

Following signature on 14 September, [Regulation \(EU\) 2016/1624](#) entered into force on 6 October, and a formal [launch event](#) took place that day on the EU's external border at a crossing point between Bulgaria and Turkey.



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## Gender aspects of migration and asylum in the EU: An overview

### SUMMARY

Against a background of huge worldwide displacement, the EU is currently facing a surge in the number of people arriving in search of international protection. One aspect of this massive movement of people that is beginning to come under the spotlight is its gender dimension. Men and women are exposed to different types of risk and vulnerability during the different stages of migration. Due to their status in society and their sex, women and girls are particularly subject to discrimination and sexual and gender-based violence – which may of themselves be grounds for flight – and have specific protection risks and needs that may be overlooked in reception procedures. In addition, failure to take due account of gender issues in asylum systems and integration measures may lead to discriminatory outcomes. Other factors, including age and sexual orientation, also affect vulnerability and needs.

A body of gender-sensitive standards and guidance on displacement and asylum has been built up at international and EU levels. However, reservations have been expressed regarding some aspects of the EU legal framework, particularly its implementation at national level. It has been concluded that variable responsiveness to gender across the EU means that women are not guaranteed consistent gender-sensitive treatment when they seek protection in Europe.

In the context of the current refugee crisis, stakeholders including the UN Refugee Agency (UNHCR), women's and refugee organisations and the European Parliament have expressed strong concerns about protection gaps, and called for further action to protect women and girls.



### In this briefing:

- Context
- Protection risks and needs through a gender lens
- Gender-disaggregated statistics
- The international and European legal framework and guidance
- Gaps in protection
- Stakeholder positions and recommendations
- Main references

### Glossary

**Gender-related persecution:** a term encompassing the range of different claims in which gender is a relevant consideration in the determination of refugee status. Persecution may result from gender-discriminatory laws in a person's home country or from culturally accepted forms of violence against women, such as domestic abuse, female genital mutilation (FGM), or 'honour' killings, which women may not be able to seek protection from by appealing to their home country governments.

**Gender-based violence:** acts committed against persons, whether male or female, because of their sex and/or socially constructed gender roles, which may include, but are not always manifested as a form of sexual violence. The acronym 'SGBV' may be used to encompass both.

**Gender vs sex:** 'Sex' refers to biological and physiological differences between females and males. 'Gender' refers to the social differences between females and males throughout the life cycle that are learned, and though deeply rooted in every culture, are changeable over time and have wide variations both within and between cultures. Gender has a direct influence on roles, relations, vulnerabilities, needs and capacities.

Sources: European Commission, DG Echo [Gender Brochure](#), 2014; World Health Organization, [Fact Sheet No 239](#), 2016; [SJAC Gender & SGBV Documentation Policy](#), 2015.

### Context

Against a background of massive [worldwide displacement](#), the European Union is currently experiencing a surge in the number of people arriving in search of international protection. In [2015](#), over 1 million people – refugees, asylum-seekers and other migrants<sup>1</sup> – came to Europe, either fleeing conflict and persecution, or in search of better prospects, and this trend has [continued](#) in the first months of 2016.<sup>2</sup> Many of those travelling on perilous routes and rapidly crossing several different EU Member States need [humanitarian aid](#), including access to water, food, shelter, healthcare and psychological and legal support. Once they reach a final destination, many will apply for asylum and some will be given the opportunity to stay and integrate.

*While forcibly displaced men and boys also face protection problems, women and girls can be exposed to particular protection problems related to their gender, their cultural and socio-economic position and their legal status, which mean they may be less likely than men and boys to be able to exercise their rights and therefore that specific action in favour of women and girls may be necessary to ensure they can enjoy protection and assistance on an equal basis with men and boys.*

[Conclusion on Women and Girls at Risk](#), UNHCR Executive Committee 2006.

The gender dimension of this massive movement of people is now coming into focus, with international recognition that experiences of displacement are [not gender-neutral](#), but fundamentally shaped by gender and gender inequality, and that this needs to be taken into account to ensure an equitable and effective response.

In this context, it is important to investigate the current refugee crisis from a gendered perspective in order to assess the experiences of women and girls compared to those of men and boys in displacement, reception, asylum procedures and integration, ascertain whether EU and national-level responses are commensurate with needs and meet international standards, identify protection gaps and determine what can be done to remedy them. From a different perspective, migration can also open up new opportunities, challenging restrictive gender roles and creating possibilities for engagement in education, work and public life. As the focus moves to integration in host communities, steps will also need to be taken to ensure that women and girls benefit equally.

## Protection risks and needs through a gender lens

*The smuggler was nice to me but he liked to use women. I know that he used three Eritrean women. He raped them and they were crying. It happened at least twice. Some of the women don't have money to pay the ransom so they accept to sleep with the smugglers. We were held in the desert and the women were sleeping in a tent. The men were sleeping outside. At night, the smuggler would call the name of a woman he liked. If she refused to come out, he would force her and say, 'I want to help you. I want to give you the money. I will let you travel to Europe without paying anything.' After it happened a few times, we decided to protect the women. We wouldn't sleep at night because we were guarding the tent.*

Medenine, a 17-year-old Somali boy interviewed by Amnesty International, Tunisia, March 2015. Source: [Amnesty International](#), May 2015.

Although displacement poses risks for everyone, as a result of gender norms, roles and relations, men and women are exposed to [different types of risk and vulnerability](#). Due to their status in society and their sex, women and girls are particularly vulnerable to [discrimination and SGBV](#) – which may in itself be grounds for flight – and have other specific protection risks and needs that may be overlooked in [reception systems](#), including [detention](#). In addition, failure to take due account of gender issues in asylum procedures and integration measures may lead to discriminatory outcomes. Here too, women and girls may face additional challenges [securing asylum](#) and [integrating](#) into host communities. Gender intersects with other factors such as age and disability, leaving [girls, older women and those with disabilities](#) particularly vulnerable. Lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals also face [specific challenges](#).

Sexual violence is one of the most [pervasive threats](#) to women and girls using 'irregular' routes into and through Europe – especially those without support or travelling alone:

- **SGBV in countries of origin:** Rape and other forms of sexualised violence are used in conflict, primarily against women. In Syria for example, both are [reported](#) to be widespread in [detention](#) and other contexts. Women and girls may also be at risk of practices such as [FGM](#) and [forced early marriage](#), including in 'safe' countries.
- **Domestic violence:** Gender roles can be challenged by the disempowering experience of being a refugee, and the resulting [loss of self-esteem among men](#) can lead to an increase in domestic violence against women and children.
- **Coerced 'survival sex':** UNHCR [reports](#) that women and children, in particular, are being forced into 'survival sex' along migration routes, providing sexual services in exchange for continuing their journey, safe passage for themselves or their families or to obtain necessary documentation or other assistance.
- **Human trafficking:** In February 2016, Europol [reported](#) that over 90% of refugees and migrants arriving in the EU resort to migrant smugglers in order to reach their destination, and that many of these are also involved in human trafficking. The International Organization for Migration (IOM) has [identified](#) refugees and migrants as the groups most vulnerable to trafficking, with women and girls within these groups most at risk and most likely to be taken for sexual exploitation.<sup>3</sup>
- **Sexual harassment in transit camps and reception centres:** Both outside and within Europe, harassment and assaults have been [documented](#) against female refugees and migrants – by other migrants and by public officials or staff in reception and detention centres. Women and girls alone or with children feel particularly threatened in transit areas and camps, where the risks are compounded by overcrowding and lack of segregated sleeping and sanitary facilities.
- For women and girls in particular, SGBV may have severe secondary effects. In Syria

and elsewhere, [societal attitudes](#) mean that they may be particularly reluctant to report SGBV due to the shame, social stigma and '[dishonour](#)' to their families. They may also risk further physical and sexual violence when reporting SGBV.

Women refugees and migrants have particular [health risks and needs](#). In countries of origin, their health may already be compromised by disruptions to essential services. During displacement, lack of access to family planning, obstetric care and sexual health services can put women and girls at greater risk of unwanted pregnancy, unsafe delivery and sexually transmitted infections, including HIV. Pregnant and breast-feeding women need nutritional support. All women and girls have basic hygiene needs, including sanitary napkins, which can be met through provision of '[dignity kits](#)'. In addition to general [healthcare and support](#), survivors of SGBV require specialised assistance.

Women may face greater [obstacles in accessing asylum and have specific needs in the asylum process](#). They may be less able to travel to seek asylum due to lack of resources or cultural norms. They may be unaware of their rights or not know that the form of harm they have suffered can be grounds for a claim. If the harm they have suffered took place in the private sphere, or if their political activities are undocumented, it can be harder for them to establish the credibility of their claim. Trauma, shame, or the presence of family members may make it particularly difficult to speak about their experiences. These obstacles may not be recognised in asylum procedures or by the officials handling claims. Having safe spaces, sufficient time and trained female staff to assess their claims can be crucial to fair consideration of their application.

One young Sri Lankan woman, seeking asylum in France, was forced to take her seven year-old son with her to her substantive asylum interview. She explained: *He heard it all. At one point, he asked if he could go out because what he heard was too hard for him.*

Source: [Study for the European Parliament](#), 2012.

Women also face [further challenges](#) in host countries, where lack of childcare may prevent access to training and employment, hampering social inclusion and integration.

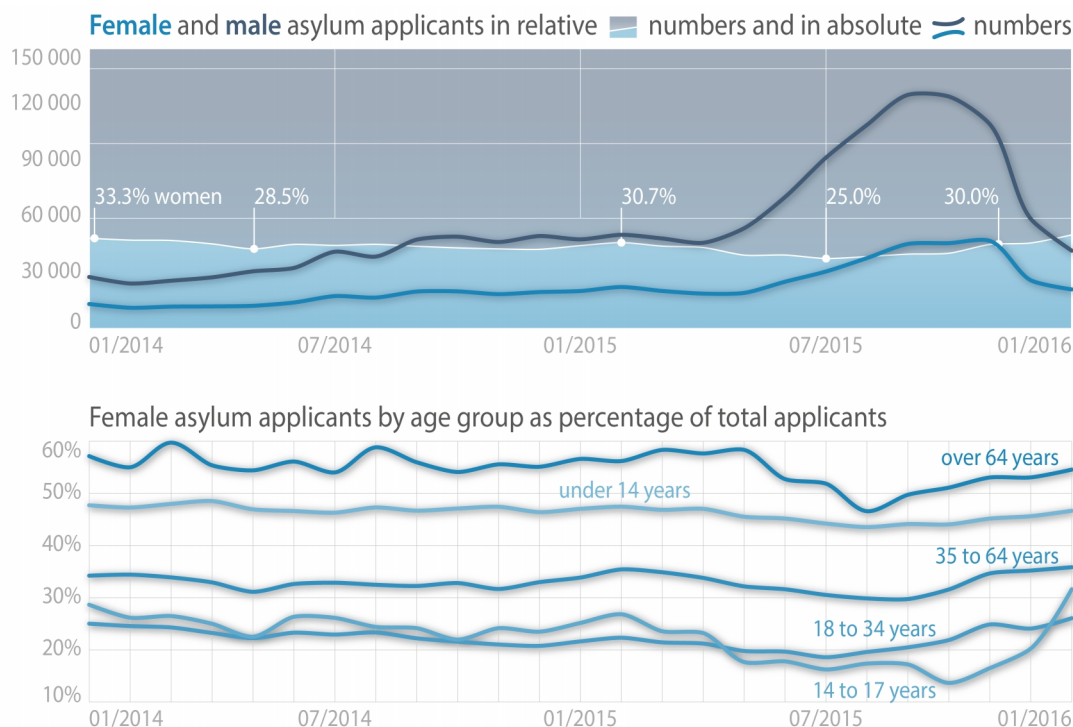
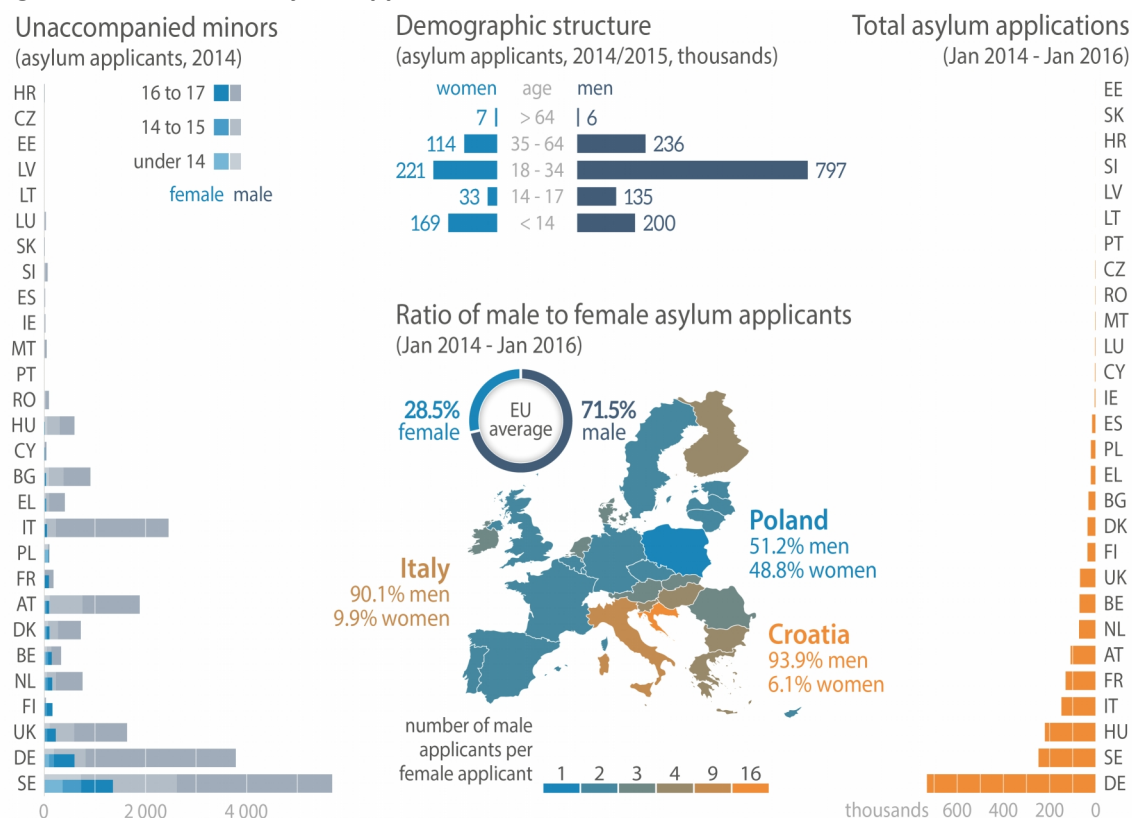
### Gender-disaggregated statistics

Gender-disaggregated data are needed to identify specific protection needs, ensure that asylum policy and practice are not discriminatory and inform social inclusion and integration policy. Member States are required to provide gendered information on the number of asylum applicants and the grant of refugee status or other subsidiary forms of protection, but a number of gaps have been identified.<sup>4</sup>

Data collection on arrivals is problematic and disaggregated figures for all land and sea arrivals are unavailable. According to [UNHCR data](#), of the total of 1 015 078 refugees and migrants who arrived in the EU by sea in 2015, 58% were men, 17% women and 25% children (gender not specified).<sup>5</sup> However, the balance appears to be changing. On 1 March 2016, UNHCR figures [showed](#) that of the 130 110 arrivals by sea since 1 January 2016, 47% were men, 20% women and 34% children. [Demographic profiling](#) by [REACH](#) in February 2016 also shows that the majority (65%) of groups travelling on the [Western Balkans route](#) were families, whilst men travelling alone represented one fifth (21%) of the total. This shift has implications for the targeting and organisation of support.

Asylum figures may provide a more stable source of data, although many cases are [reported](#) to be pending.

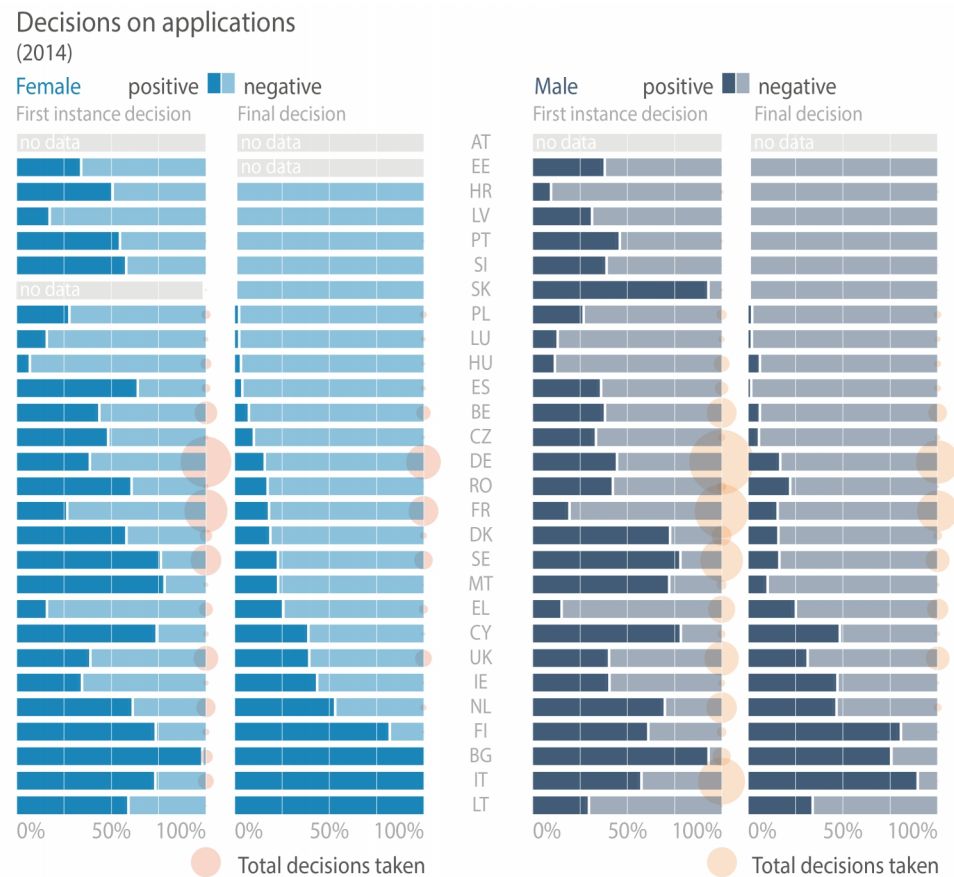


**Figure 1: Share of female and male asylum applications in the EU-28****Figure 2: Sex ratios in asylum applications from minors and across EU Member States**

Between 2014 and 2016, more men than women applied for asylum across the EU-28 (Figure 1), but with differences across age groups. There are interesting variations in the ratio of male to female applicants between EU Member States (Figure 2). Given the current complexity of migration flows and the variety of individual reasons for seeking asylum in particular countries, further research is necessary to make inferences about the reasons. On asylum decisions, Eurostat [reports](#) that in 2014, close to half (45%) of

EU-28 first-instance asylum decisions resulted in positive outcomes, that is grants of refugee or subsidiary protection status, or an authorisation to stay for humanitarian reasons. For final decisions, the share of positive outcomes was lower, at 18%. Gender-disaggregated data (Figure 3) shows that recognition rates in general and by sex varied widely, warranting further research.

**Figure 3: Share of women and men in positive and negative decisions**



### The international and European legal framework and guidance

*Female applicants may be subjected to the same forms of harm as male applicants but they may also face forms of persecution specific to their sex, such as sexual violence, dowry-related violence, female genital mutilation, domestic violence, and trafficking.*

Source: UNHCR [Guidelines on Gender-Related Persecution](#), 2002.

Since the 1990s, when the United Nations High Commissioner for Refugees (UNHCR, or the UN Refugee Agency) issued its first [policy](#) on refugee women and [guidelines](#) for their protection, a body of gender-sensitive standards and guidance on displacement and asylum has been built up at international level. At EU level, too, there have been moves to include more gender and gender-identity sensitive procedures in [humanitarian action](#) and the rules of the [Common European Asylum System](#) (CEAS).

#### Gender aspects of international law

At international level, standards providing a framework for protection are set out in a number of instruments of international refugee, human rights and humanitarian law. These have evolved to take account of the specific situations of women and girls and LGBTI individuals.<sup>6</sup> The [Convention on the Elimination of All Forms of Discrimination against Women](#), in particular, should be [read across](#) to international refugee law.

The fundamental instrument for international refugee protection remains the [1951](#)



[Geneva Convention relating to the Status of Refugees](#) (hereafter Refugee Convention), amended by the 1967 Protocol. As well as defining who qualifies as a refugee, it guarantees a range of rights, including: to seek asylum; not to be returned to a country where life or freedom would be in danger (*non-refoulement*); non-discrimination; freedom of movement; and to access work and education.

The Convention was drafted before women's rights were recognised as a fundamental aspect of international law, and the original text lacked a gender perspective. Notably, neither sex nor sexual orientation are included in the international definition of a refugee as: 'a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country' (Article 1). Consequently, women's experiences of persecution, and forms of harm that only or mostly affect them, have tended to be excluded from the dominant interpretation of the Convention, and they have been unable to benefit consistently and equitably from its protection.

However, as stated in the (non-binding) UNHCR [Guidelines on Gender-Related Persecution](#) (2002), it is now accepted that **proper interpretation of the refugee definition should cover gender-related claims**. In particular, gender-based violence (e.g. domestic violence, rape, forced marriage, FGM and trafficking), cumulative discrimination (e.g. the effect of serious restrictions on the right to earn a livelihood) and disproportionately severe punishment (e.g. against women whose actions transgress accepted custom or traditions), may all equate to persecution and support a claim for refugee status, whether perpetrated by the state or private actors.<sup>7</sup> This allows consideration of previously disregarded forms of persecution predominantly affecting women, including those which take place in the domestic sphere.

Under the UNHCR [Guidelines on Membership of a Particular Social Group](#) (2002) **women can be recognised as a social group** under Article 1A(2) of the Convention. The same applies for **LGBTI individuals**, as recognised in these guidelines and the [Guidelines on Claims to Refugee Status based on Sexual Orientation and/or Gender Identity](#) (2012). The fact that age is not explicitly mentioned in Article 1 of the Convention as individual grounds of persecution means that the **special circumstances of asylum-seeking children** have not always been taken into account. The [Guidelines on Child Asylum Claims](#) (2009) clarify that 'persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status'.

Several other international guidelines and standards are particularly relevant in relation to the cross-cutting issues of **gender-based violence and health**:

- UNHCR has issued specific guidance on [trafficking](#) (2006) and [Female Genital Mutilation \(FGM\)](#) (2009), clarifying that these may be **grounds for refugee status both for victims and persons at risk**. New [Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action](#), were issued in 2015, stipulating that actors should start from the premise that GBV is occurring and take action, regardless of the presence or absence of concrete evidence.
- The Council of Europe's 2011 [Istanbul Convention](#) on preventing and combating violence against women and domestic violence requires that **protection must be provided to women without discrimination on any grounds, including 'migrant or**

**refugee status, or other status'**. Two articles (60 and 61) relate specifically to the rights of women seeking asylum. Article 60 stipulates that: (1) parties to the Convention must provide the legislative framework to **recognise gender-based violence as grounds for persecution** within the meaning of Article 1 of the Refugee Convention; (2) parties must give a **gender-sensitive interpretation to all the other grounds** of Article 1; and (3) parties must provide **gender-sensitive reception conditions, support services and asylum procedures**. Article 61 provides that the **principle of non-refoulement applies for victims of gender-based violence**.

- The [International Covenant on Economic, Social and Cultural Rights](#) (ICESR) recognises the **enjoyment of the highest attainable standard of health as a fundamental right or every individual, regardless of immigration status** (Article 12(1)). As well as health care, this includes a right to a certain number of underlying preconditions, including safe water and sanitation, food, nutrition and housing, and access to information, including on sexual and reproductive health. The right to health must be fulfilled at each stage of the migration process.

All EU Member States are parties to the Refugee Convention, CEDAW and ICESR, whilst 12 have [ratified](#) the Istanbul Convention.

#### Gender aspects of EU law and policy

Mirroring international law, the [EU legal framework](#) has evolved to give increasing recognition to the gender aspects of migration and asylum. The key acts comprising the Common European Asylum System (CEAS) incorporate gender-sensitive elements, some of which have been expanded in recent recasts:

- Regarding the **determination of refugee status**, the [Qualification Directive 2011/95/EU](#)<sup>8</sup> clarifies that **gender-based persecution and persecution by non-state actors are valid grounds** for refugee status and that gender, **including gender identity and sexual orientation should be considered when defining a particular social group** (recital 30). Member States must also consider 'child-specific forms of persecution' when assessing applications from minors (recital 28) and provide subsidiary protection status for individuals who are not eligible for refugee protection, but demonstrate 'substantial grounds' for believing that they would face real risk of serious harm if returned to their country of origin (Article 20).
- With respect to **asylum claims**, the revised [Asylum Procedures Directive 2013/32/EU](#) aims to ensure that all Member States apply a common, high quality standard when examining applications. From a gender perspective, this includes an **obligation to identify applicants who might require specific procedural guarantees because of their age, gender, sexual orientation or sexual identity** (recital 29), and to **ensure substantive equality between female and male applicants** (recital 32). **Procedures are to be gender sensitive**, which means, in concrete terms, that interview conditions should allow applicants to speak about gender-based persecution (ibid.), that family members should not be present (Article 15), that applicants should have access to an interviewer of the same sex (ibid), and that staff dealing with claims should have training (ibid) or access to gender expertise (Article 10). Any procedures based on the concept of 'safe third country' or 'safe country of origin' must take account of the complexity of gender-based persecution (recital 32). Those in need of special help due to age, disability, illness, sexual orientation, torture, rape or other serious forms of psychological, physical or sexual violence, are to be given support and time to explain their claims (Article 24).

- Concerning the **conditions in which asylum applicants are to be received**, the [Reception Conditions Directive 2013/33/EU](#) regulates access to housing, food, health, medical and psychological care and employment while claims are examined. The category of '**vulnerable persons**' **requiring specific protection**, which initially included pregnant women, single parents of minors, and victims of torture, rape or other forms of physical, psychological or sexual violence, was extended in the recast to include **victims of human trafficking and FGM**. For these persons, Member States are required to conduct individual assessments to identify specific reception needs, and provide access to psychological support. The Directive also sets out common rules on the detention of asylum-seekers, including **restrictions on detention for vulnerable persons** (Article 11). Article 18 stipulates that gender and age-specific concerns must be taken into account.
- In addition to the CEAS directives, the [Victims Directive](#) requires that support be provided to all victims of crime and can be [interpreted](#) to apply to asylum seekers.
- With regard to **family reunification**, which can affect women differently from men, as principal applicants and dependents, the [Directive on the right to family reunification](#) (2003/86/EC) stipulates that the right to family reunification must be implemented in respect for the rights of women and children (recital 11). The [Communication on guidance for application](#) (2014), clarifies that under Article 15(3) the particularly difficult circumstances where an autonomous residence permit may be given, include domestic violence, forced marriage and risk of FGM.

### Gaps in protection

*There are vast and worrying disparities in the way different EU States handle gender-related asylum claims. As a result, women are not guaranteed anything close to consistent, gender-sensitive treatment when they seek protection in Europe. Women seeking asylum are too often confronted with legislation and policy that fail to meet acceptable standards, while even gender-sensitive policies are not implemented in practice.*

Source: [Gender-related asylum claims in Europe](#), European Parliament, 2012.

Reservations have been expressed about aspects of the EU legal framework and its transposition and implementation at national level, which are contributing to protection gaps for women and girls.

Regarding the legislative framework itself, there are [concerns](#) about the extent to which the Qualification Directive will provide consistent protection for gender-related claims. There are also issues regarding proper consideration of claims in the kind of '[accelerated](#)' [asylum procedures](#) which began to be introduced in the European Union in the mid-2000s and which have recently been further emphasised in the context of the current influx of refugees. Although the planned [common list of 'safe countries'](#) may lead to comparable standards, generalising about safety risks could lead to specific instances of persecution being disregarded and women's rights are often unreferenced in assessments of safeness.<sup>9</sup>

In **relation to asylum**, a number of sources, specifically studies for the United Nations ([2004](#)), the Council of Europe ([2010](#)), the European Parliament ([2012](#)) and recent academic research ([2014](#); [2015](#)) have pointed to continuing divergences between European countries when it comes to the integration of gender in asylum policy and practice, with many disparities in the way EU Member States handle claims. Not all countries recognise women as members of a social group under the 1951 Geneva

Convention. Sexual violence, and specific forms of harm, such as trafficking and [FGM](#), are not always recognised as persecution.

On **reception conditions across the EU**, an evaluation published in 2014 [illustrated](#) that here too, even before the current pressures, there was considerable disparity across the EU and further efforts were required to ensure appropriate standards for vulnerable persons. A [report](#) published by the Centre for European Policy Studies (CEPS) in September 2015 notes that several countries are currently 'failing abysmally to meet their standards'. As of [September 2015](#) infringement proceedings were pending against 19 Member States. Research from 2015 also [documented](#) unacceptably high risks of sex and gender based violence in reception centres across Europe.

As yet, there are no EU wide gender guidelines on refugee status, asylum and reception that could enable harmonised gender-sensitive asylum systems to be implemented although gender-sensitive guidelines have been introduced in some sectors. Within the remit of EU humanitarian assistance, which is [coming into play](#) in the refugee crisis, all projects funded through the EU humanitarian budget are now expected to follow the [European Consensus on Humanitarian Aid](#) and related gender [guidelines](#) (2013). The European Asylum Support Office (EASO) has introduced a training module on 'Gender, Gender Identity and Sexual Orientation' and a gender mainstreaming throughout the curriculum. EASO has also issued gender-sensitive Country of Origin (COI) information for [Chechnya](#) and [Nigeria](#), and on [LGBT issues](#). A workshop on FGM is planned for June 2016, looking towards a possible COI publication on this topic.<sup>10</sup>

Without European rules, UNHCR guidelines should help to ensure common standards, yet the study published by the European Parliament in 2012<sup>11</sup> [found](#) that they were overlooked in all the countries researched. Where national gender guidelines existed, they were not always implemented. Thus, as noted by Freedman (op cit.) even where specific guidelines exist, this may not be sufficient to ensure protection in practice.

In the current refugee crisis, reports by international organisations, human rights groups and women's and refugee organisations have spotlighted severe systemic failings in the response to the risks faced by women travelling to and through Europe including:

- Inadequate planning, which has led to a hastily designed response and to dangerous conditions along the route, especially for the most vulnerable among the refugees: single women traveling alone, female-headed households, pregnant and lactating women, adolescent girls, unaccompanied minors and persons with disabilities; ([Women's Refugee Commission](#) (WRC), 2016)
- A failure to identify vulnerable groups and ensure that they can register and get proper access to basic services such as food and health care; ([Human Rights Watch](#), Lesbos, October 2015).
- A dearth of all services that specifically respond to the needs of women and girls, such as separate distribution lines for food, separate [WASH](#) facilities, separate accommodation for specific groups, including single women and female headed households and safe spaces to leave young children; (WRC, [2015](#))
- A lack of prevention and response services for SGBV, including: a lack of trained staff to inform, identify and support victims, too few female interpreters, a complete absence of clinical care and no formal case management or coordinated cross-border response (WRC, [2015](#) and [2016](#)).

## Stakeholder positions and recommendations

In view of the above, the UNHCR has [called](#) for further action to protect women and children on the part of European governments. On the basis of the assessment missions in 2015 and 2016, UNHCR, the United Nations Population Fund and Women's Refugee Commission have also issued a number of [concrete recommendations](#) to the EU and national governments regarding the improvement of conditions in transit camps, support for victims of SGBV and the development of long-term gender-sensitive asylum, protection and integration systems, including mechanisms for family reunification.

Amnesty International has strongly criticised the failure by governments and aid agencies to provide protection to women, [stating](#) that, 'if this humanitarian crisis was unfolding anywhere else in the world we would expect immediate practical steps to be taken to protect groups most at risk of abuse, such as women travelling alone and female-headed families. At a minimum, this would include setting up single-sex, well-lit toilet facilities and separate safe sleeping areas'.

Following up [previous work](#) on gender and asylum, the European Women's Lobby (EWL) has [called](#) for a clear EU response to women's rights in the current situation.

### EU positions

At EU level, the [Council Conclusions on migration](#) of 12 October 2015 express a commitment to upholding the human rights of women and girls. In its [work on immigration and asylum](#), the European Economic and Social Committee has set out [recommendations](#) for long-term integration of migrant women.

On 8 March 2016, the European Parliament is due to vote on an own-Initiative [Report on the situation of women refugees and asylum seekers in the EU](#) from the Committee on Women's Rights and Gender Equality (FEMM) (Rapporteur Mary Honeyball, S&D), which calls for urgent action to improve safety and security and steps to ensure that all asylum policies and procedures are made gender sensitive. Specifically, it urges that safe and legal routes to the EU be made available for those fleeing conflict and persecution; that all EU countries sign and ratify the Istanbul Convention and recognise gender-based violence as grounds for claiming asylum and that a comprehensive set of EU-wide guidelines be adopted as part of wider reforms to migration and asylum policy. These standards should include safe and adequate reception facilities, trained staff and female interviewers and interpreters and avoidance of detention for vulnerable women, including survivors of sexual violence. The report also calls for consideration to be given to measures such as access to education, training and childcare to promote the integration of women asylum seekers and refugees and urgent action against people smugglers. The FEMM Committee has also conducted fact-finding missions in refugee camps across Europe and has made the issue the focus for the [events](#) marking International Women's Day in 2016.

*I fled my country because of the persecution I had been subjected to because of my activism against excision and my political engagement to promote the rights of women.*

Halimatou Barry; Source: [Too Much Pain – the Voices of Refugee Women](#), UNHCR, 2014

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[The reception of female refugees and asylum seekers in the EU – Case Study Germany](#), Anne Bonewit, Policy Department C, European Parliament, February 2016

[No Safety for Refugee Women in the European Route: Report from the Balkans](#), Women's Refugee Commission, January 2016



[Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis Greece and the former Yugoslav Republic of Macedonia](#), UNFPA, UNHCR and Women's Refugee Commission, November 2015

[Female refugees face physical assault, exploitation and sexual harassment on their journey through Europe](#), Amnesty International, 18 January 2016

[Taking action against violence and discrimination affecting migrant women and girls](#), IOM, 2013

[Gender-related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States](#), Study for the European Parliament, 2012

## Endnotes

- <sup>1</sup> For definitions of refugee, asylum-seeker and migrant status, see: [Refugee status under international law](#), EPRS, 2015. UNHCR has [highlighted](#) that current migration flows into the EU are 'mixed', i.e. they comprise both people fleeing from war, conflict and persecution and individuals moving for other reasons, who share the same migration routes and risks. Accordingly, migration in this paper includes the movement of refugees, displaced persons, economic migrants and persons moving for other purposes, including family reunification. The focus is on 'irregular migration' and a gendered analysis of the protection needs of refugees and asylum-seekers. However, the analysis also touches on certain areas, such as [family reunification](#), which fall into the area of 'legal migration' into the EU.
- <sup>2</sup> [UNHCR: Refugees/Migrants Emergency Response – Mediterranean](#) provides detailed and continuously updated data. According to Eurostat figures, as at 26 February 2016, a total of 1 297 420 asylum applications were registered in the EU in 2015. Data for October, November and/or December 2015 are still missing for certain Member States.
- <sup>3</sup> Further information on trafficking and the EU response to it can be found in [The gender dimension of human trafficking](#), S. Voronova, A. Radjenovic, EPRS, 2016. The European Parliament's Committee on Women's Rights and Gender Equality (FEMM) is considering a [draft own-initiative report](#) on the gender dimension of the implementation of EU Directive (2011/36/EU) on combating trafficking in human beings (rapporteur: Catherine Bearder, ALDE, UK).
- <sup>4</sup> [Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe](#) (UNHCR, 2004); [Gender-related asylum claims in Europe](#) (EP, 2012); and [Gendering the International Asylum and Refugee Debate](#), (Jane Freedman, 2015). Shortcomings included inconsistent reporting of gender-disaggregated data, particularly on the number of asylum appeals and their outcomes. Beyond the numbers, the lack of reporting on the types of gender-related persecution in applications and decisions, which would help to indicate how gender-sensitive asylum systems are in practice, is a crucial gap.
- <sup>5</sup> Figures accessed in December 2015 from the continuously updated [data on arrivals](#) published by UNHCR. As of November 2015, the figures, cited in a UNHCR–UNPF–WRC report, were 16% women and 20% children.
- <sup>6</sup> [The IASC Gender Handbook \(Women, girls, boys and men – different needs, equal opportunities\)](#), December 2006: Detailed analysis showing how each incorporates gender and women's rights, is set out on pages 15-26.
- <sup>7</sup> For an extensive list of the forms of harm recognised as persecution on the basis of gender and gender-sensitive interpretations of the Convention Grounds see the [Guidelines for protecting women and girls during first entry and asylum procedures in Greece](#), UNHCR and Government of the Hellenic Republic, 2011, pp. 13 – 14.
- <sup>8</sup> The recast Directive is binding on all Member States except for the United Kingdom and Ireland, which will continue to be bound by the 2004 Directive, and Denmark, which is bound by neither.
- <sup>9</sup> Jane Freedman (2015), op. cit. p. 141
- <sup>10</sup> Source: statement received from EASO on 29 February 2016.
- <sup>11</sup> See note 2.

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The European Committee of the Regions, together with the Euro-Mediterranean Regional and Local Assembly and in partnership with the Maltese Presidency of the Council of the EU, is organising a conference on 'addressing the root causes of migration and the reception of migrants', on 22 February 2017.

This compendium brings together a number of relevant publications of the Members' Research Service of the European Parliamentary Research Service, in particular several on the legislative proposals put forward by the European Commission to reform the Common European Asylum System.

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