ASYLUM POLICY

The aim of the EU's asylum policy is to offer appropriate status to any non-EU national requiring international protection in one of the Member States and ensure compliance with the principle of non-refoulement[1]. To this end, the EU is striving to develop a Common European Asylum System.

LEGAL BASIS

— Articles 67(2), 78 and 80 of the Treaty on the Functioning of the European Union (TFEU);
— Article 18 of the EU Charter of Fundamental Rights.

OBJECTIVES

The EU aims to develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to all non-EU nationals who need international protection, and to ensure that the principle of non-refoulement is observed. This policy must be consistent with the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Protocol thereto of 31 January 1967. Neither the TFEU nor the EU Charter of Fundamental Rights provides a definition of the terms 'asylum' or 'refugee', but both refer explicitly to the Geneva Convention and its Protocol.

ACHIEVEMENTS

A. Advances under the Treaties of Amsterdam and Nice

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

In 1999, the Treaty of Amsterdam granted the EU institutions new powers to draw up legislation in the area of asylum, using a specific institutional mechanism: a five-year transitional period with a shared right of initiative between the Commission and the Member States and decision by unanimity in the Council after consultation with...
Parliament; the CJEU also gained jurisdiction in specific instances. The Treaty of Amsterdam also provided that, after this initial five-year phase, the Council could decide that the normal codecision procedure should apply and that it should henceforth adopt its decisions by qualified majority. The Council took a decision to that effect at the end of 2004 and the codecision procedure (now known as the ordinary legislative procedure) has applied since 2005.

With the adoption of the Tampere Programme in October 1999, the European Council decided that the Common European Asylum System should be implemented in two phases: the adoption of common minimum standards in the short term should lead to a common procedure and a uniform status for those who are granted asylum valid throughout the EU in the longer term.

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

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

B. The Treaty of Lisbon

The Treaty of Lisbon, which entered into force in December 2009, changed the situation by transforming the measures on asylum from establishing minimum standards into creating a common system comprising a uniform status and uniform procedures.

This common system must include:

— A uniform status of asylum;
— A uniform status of subsidiary protection;
— A common system of temporary protection;
— Common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
— Criteria and mechanisms for determining which Member State is responsible for considering an application;
— Standards concerning reception conditions;
— Partnership and cooperation with non-EU countries.
Since the Treaty of Lisbon was adopted, Article 80 of the TFEU has also explicitly provided for the principle of solidarity and fair sharing of responsibility, including any financial burdens, between Member States. EU actions concerning asylum should, if necessary, contain appropriate measures to ensure this principle is followed. The treaty also significantly altered the decision-making procedure on asylum matters, by making codecision the standard procedure. In addition, the arrangements for judicial oversight by the CJEU have been improved significantly. Preliminary rulings may now be sought by any court in a Member State, rather than just national courts of final instance, as was previously the case. This has enabled the CJEU to develop a larger body of case law in the field of asylum.

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

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

C. The main existing legal instruments and current reform efforts

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

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

The European Agenda on Migration also sets out further steps towards a reform of the CEAS, which were presented in two packages of legislative proposals in May and July 2016 and were discussed between Parliament and the Council throughout the legislative term ending in May 2019. However, no legislative acts were adopted due to the files being blocked in the Council or other specific files being put on hold due to blockages on connected files. This set of legislative initiatives is intended to improve, inter alia, the CEAS by proposing directly applicable regulations instead of directives (except for reception conditions, which would continue to be covered by a directive that would still require implementation in national law). It covers the following:

— Measures to simplify, clarify and shorten asylum procedures, ensure common guarantees for asylum seekers and ensure stricter rules to combat abuse, including a common list of safe countries of origin – which was originally proposed as a separate regulation. On 25 April 2018, Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted its report;

— Who can qualify for international protection (see the proposed qualification directive), the aim being to achieve greater convergence of recognition rates and forms of protection, including more restrictive provisions sanctioning applicants’ secondary movements and compulsory status reviews even for recognised refugees: LIBE adopted its report on 15 June 2017;


— The reform of the Dublin Regulation, which lays down criteria for determining the Member State responsible for examining an application for international protection (in principle the first country of entry). The proposal preserves the current criteria in the Dublin system while supplementing them with a corrective allocation mechanism to relieve Member States that are under disproportionate pressure. LIBE adopted its report on 19 October 2017;

— A revision of the Eurodac asylum fingerprint database, extending it to cover personal data on non-EU nationals who have not applied for international protection and have been found to be staying irregularly in the EU, allowing law enforcement to access the database, and fingerprinting children from the age
of six to facilitate tracking and family reunification. LIBE adopted its report on 30 May 2017;

— Transforming EASO from a supporting EU agency into a fully-fledged EU Agency for Asylum (EUAA), which would be responsible for facilitating the functioning of the CEAS, ensuring convergence in the assessment of asylum applications across the EU and monitoring the operational and technical application of EU law, including assisting Member States with the training of national experts. Parliament adopted its report on the proposal on 8 December 2016, and in mid-June 2017 a broad provisional agreement with the Council was reached. On 12 September 2018, while the June 2017 provisional agreement was still on hold, the Commission adopted an amended proposal for a regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 clarifying certain operational tasks of the EUAA and aiming to align certain provisions of the provisional agreement on the EUAA with its new draft regulation on the European Border and Coast Guard – Frontex (simultaneously proposed in September 2018), and to further strengthen cooperation between the two agencies. LIBE originally rejected the amended proposal on 10 December 2018, but in June 2021, the Council and Parliament reached a new provisional agreement on the EUAA Regulation, building on the previous 2017 agreement, although the application of some of the provisions of the regulation (most notably those related to the new monitoring functions granted to the agency) will be deferred to a later date;

— A Union Resettlement Framework, which would provide for common EU rules on the admission of non-EU nationals in need of international protection, including financial support for Member States’ resettlement efforts, thus complementing the current ad hoc multilateral and national resettlement programmes. LIBE adopted its report on the proposal on 12 October 2017. A provisional agreement on the main aspects of the regulation was reached on 13 June 2018 between Parliament and the Council. However, as the Committee of the Permanent Representatives of the Governments of the Member States to the European Union did not formally endorse it, negotiations at the technical level continued and Parliament later informally indicated that in principle it stands by the provisional agreement reached in the June 2018 trilogue. The Council continues to deal with this legislative file following the ‘package approach’;

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

On 23 September 2020, the Commission issued the New Pact on Migration and Asylum in an attempt to give a fresh start to the stalled CEAS reform. The pact aims to strike a new balance between responsibility and solidarity. The Commission proposes to integrate the asylum procedure into overall migration management, linking it with a pre-screening and return; it proposes:

— By amending its 2016 proposal for an asylum procedure regulation, a new border procedure to establish the status of migrants swiftly on arrival, which is designed to work seamlessly with a return border procedure (amended proposal for an asylum procedure regulation) in order to swiftly return unsuccessful asylum applicants. Following a European implementation assessment, on 10 February 2021 Parliament adopted a resolution criticising the application of the border procedure under Article 43 of the 2013 Asylum Procedures Directive;

— A pre-entry screening process, which should be applicable to all non-EU nationals who are present at the external border without fulfilling the entry conditions or after disembarkation following a search and rescue operation (proposal for a pre-entry screening regulation);

— Through its proposal for an Asylum and Migration Management Regulation (RAMM), a common framework to ensure that the challenge of irregular arrivals is not shouldered by a few Member States but by all of them. The Commission proposes some new provisions on the determination of responsibility for an asylum claim, and a new solidarity mechanism focusing on relocation (specifically for the significant share of migrants disembarked after search and rescue operations at sea) and return sponsorship. Accordingly, the Commission has withdrawn its 2016 Dublin proposal, as its provisions have been integrated into the RAMM;

— A crisis and force majeure regulation to deal with exceptional situations of mass influx of non-EU nationals arriving irregularly, in order to grant Member States the flexibility to react in a moment of crisis, and to ensure that the system of solidarity envisaged in the RAMM is adapted to times of crisis. Accordingly, the Commission has withdrawn its 2015 crisis relocation mechanism proposal and intends to repeal the Temporary Protection Directive;

— The amended 2016 proposal for a Eurodac regulation envisages upgrading it to an EU database to support the common framework on asylum, resettlement and irregular migration, including return policies, and making it fully interoperable with border management databases.

What is more, the Commission proposes to build on the progress already made on the remaining files, and Parliament and the Council are encouraged to progress as swiftly as possible, namely on the Qualification Regulation, the Reception Conditions Directive, the EUAA, and the Union Resettlement Framework. Finally, the Commission, in its Recommendation on legal pathways to protection in the EU, recommends that Member States implement in 2021 their unfulfilled pledges for resettlement from 2020, and invites the Member States to introduce and make more use of other pathways.
for humanitarian admission such as family reunification and community or private sponsorship schemes, as well as complementary pathways linked to education and work.

D. The external dimension

Adopted in 2011 by the Commission, the Global Approach to Migration and Mobility is the overarching framework of the EU’s external migration and asylum policy. It defines how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities. It is embedded in the EU’s overall external action and includes development cooperation. Its main objectives are to better organise legal migration, to prevent and combat illegal migration, to maximise the development impact of migration and mobility, and to promote international protection.

The European Council and Turkey reached an agreement in March 2016 aimed at reducing the flow of irregular migrants into Europe via Turkey. According to the EU-Turkey Statement, all new irregular migrants and asylum seekers arriving from Turkey on the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Turkey. Also, for each Syrian returned to Turkey, another Syrian should be resettled in the EU, in exchange for further visa liberalisation for Turkish citizens and the payment of EUR 6 billion under the Facility for Refugees in Turkey, until the end of 2018. According to the Commission’s last Progress report on the Implementation of the European Agenda on Migration of 16 October 2019, the statement has continued to play a key role in ensuring that the challenge of migration in the eastern Mediterranean is addressed effectively. However, the report stresses that Turkey is today facing increasing migration pressure, as instability in the wider region continues, and that the EU’s assistance provides vital support to people in need via the EUR 6 billion Facility for Refugees in Turkey. In February 2020, Turkey threatened to suspend the statement, leading to knock-on effects in Greece, which suspended the right to asylum and blocked large numbers of migrants at its borders, in addition to reported pushbacks in the Aegean Sea. In March 2020, Turkey suspended the readmission of returnees from the Greek islands because of the pandemic, and the EU is currently trying to persuade Turkey to resume readmission at the highest political level.

One of the key initiatives presented in the New Pact on Migration and Asylum was the promotion of tailor-made and mutually beneficial partnerships with non-EU countries in the area of migration. Consequently, the EU-Turkey Statement might serve as blueprint for future EU cooperation agreements with North African countries, although the compatibility of measures under the statement with international and EU refugee law and human rights standards is questionable.

On a global level, in September 2016, the United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants, a landmark political declaration aimed at improving how the international community responds to large-scale movements of refugees and migrants and to protracted refugee situations. As a result, two global compacts were adopted in 2018, for refugees and for other migrants. The New York Declaration sets out a Comprehensive Refugee Response Framework, setting out specific actions needed to ease pressure on host countries,
enhance refugee self-reliance, expand access to third-country solutions and improve conditions in countries of origin to enable refugees to return in safety and dignity. Based on these four key objectives, on 17 December 2018, the United Nations General Assembly affirmed the Global Compact on Refugees.

E. Funding available for asylum policies

The main funding instrument in the EU budget in the area of asylum is the Asylum, Migration and Integration Fund (AMIF). AMIF’s allocation during the previous long-term EU budget (2014-2020), which coincided with the migration crisis, was increased from EUR 3.31 billion to EUR 6.6 billion. For the current long-term EU budget for the 2021-2027 period, funding has been increased again under AMIF to EUR 9.9 billion, inter alia in order to manage migration, asylum and integration in an effective and humane way, including financial support to Member States for solidarity shown through resettlement and relocation. Other EU funding instruments such as the European Social Fund (2.3.2), the Fund for European Aid to the Most Deprived (2.3.9) and the European Regional Development Fund (3.1.2) also allocate funds, mostly to support the integration of refugees and migrants, although the share of funds allotted to them is not accounted for separately in the budget lines and thus is not clear.

Similarly, the initial 2014-2020 allocation to EASO (the future EUAA) was increased from EUR 109 million to EUR 456 million. In order to be ready to provide full operational support for asylum procedures in the future, the new multiannual financial framework (MFF) provides for a budget of EUR 1.22 billion for the 2021-2027 period.

Outside the MFF – but under the EU budget – are trust funds for external measures, such as:

— The EU Emergency Trust Fund for Africa (EUR 5 billion for its original five-year period), whose mandate was extended until the end of 2021 to assist countries in Africa in migration management and border control;

— The EU Regional Trust Fund (activating EUR 2.2 billion since its establishment in 2014), set up in response to the Syrian crisis, which was also extended until the end of 2021 and has been taken over by the EU Syria Crisis Response under the 2021-2027 MFF; and

— The Facility for Refugees in Turkey (EUR 3 billion for 2016-2017 and EUR 3 billion for 2018-2019, both tranches being fully committed and contracted, and close to EUR 4 billion disbursed with projects being funded until mid-2025 at the latest). In July 2020, the EU agreed a EUR 485 million extension to humanitarian support under the facility to allow the extension of current programmes to the end of 2021.

Finally, previously outside the EU budget, the European Development Fund has been integrated into the 2021-2027 MFF under the heading ‘Neighbourhood and the World’ (EUR 98.4 billion for the whole heading). It focuses on poverty eradication and achieving the 2030 Agenda for Sustainable Development, but has increasingly been used to finance the response to migration issues in recent years.
ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has always strongly advocated for a CEAS, in accordance with the EU’s legal commitments. It has also called for the reduction of illegal migration and for the protection of vulnerable groups.

Parliament’s resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration provides an overview of its main positions and concerns in the field of asylum.

Parliament has been calling for reliable and fair procedures, implemented effectively and founded on the principle of non-refoulement. It has stressed the need to prevent any reduction in levels of protection or in the quality of reception and to ensure fairer sharing of the burden borne by the Member States at the EU’s external borders. Parliament has been calling on the Member States to make use of existing possibilities to provide humanitarian visas, and takes the view that persons seeking international protection should be able to apply at any consulate or embassy for an EU humanitarian visa, which would require an amendment to the EU Visa Code. In Parliament’s view, further steps are necessary to ensure that the CEAS becomes truly uniform: a comprehensive assessment of its implementation is needed. Parliament has noted the importance of mutual recognition by Member States not only of negative, but also of positive asylum decisions.

Parliament has emphasised that detention should only be used in very clearly defined exceptional circumstances and is never in the best interests of migrant children, and that there should be a right of appeal against detention before a court.

As regards relations with non-EU countries, under the Global Approach to Migration and Mobility Parliament has called for the stepping-up of capacity-building efforts and resettlement activities, which should be carried out together with non-EU countries hosting large refugee populations. Parliament takes the view that cooperation with non-EU countries must focus on tackling the root causes of irregular migration flows to the EU.

Parliament can also bring an action for annulment before the CJEU. This instrument was successfully used (see the CJEU judgment of 6 May 2008) to obtain the annulment of the provisions concerning the arrangements for adopting the common list of non-EU countries regarded as safe countries of origin and safe non-EU countries in Europe provided for in Council Directive 2005/85/EC.

Read more on this topic:

— Migration in Europe
— Migrant crisis in Europe
— EU immigration policy

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