



A Common European Asylum System



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A Common European Asylum System

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An area of protection and solidarity for the most vulnerable

The Common European Asylum System (CEAS) has been my top priority since the beginning of my mandate and I have been involved in negotiations since the first day. Getting the CEAS in place is an historic achievement, something the EU Member States and the Parliament have been aiming at since 1999.

The CEAS will provide better access to the asylum procedure for those who seek protection; will lead to fairer, quicker and better quality asylum decisions; will ensure that people in fear of persecution will not be returned to danger; and will provide dignified and decent conditions both for those who apply for asylum and those who are granted international protection within the EU.

We have travelled a tough road to get here. But our achievement is not yet fully complete. We now need to put in a great effort to implement our legislation and ensure this common system will function well and uniformly. Only then we will have an area of protection and solidarity deserving its name — an achievement that we can be proud of.

Cecilia Malmström,
Commissioner for Home Affairs



COMMON EUROPEAN ASYLUM SYSTEM

ASYLUM is granted to people fleeing persecution or serious harm.

The process for applying for asylum is now similar throughout the EU (Asylum Procedures Directive).

Each applicant's fingerprints are taken and sent to a database called Eurodac (Eurodac Regulation). These data are used to help identify the country responsible for the asylum application (Dublin Regulation).

Asylum applicants receive material reception conditions, such as housing and food (Reception Conditions Directive).

An asylum applicant is interviewed by a case worker trained in EU law, with the help of an interpreter, to determine whether he/she may qualify for refugee status or subsidiary protection (Qualification Directive and Asylum Procedures Directive).

Asylum is not granted to the applicant at first instance, but this refusal may be appealed in court.

Confirmation of the negative first instance decision by the court, following which the applicant may be returned to his/her country of origin or transit.

Refugee or subsidiary protection status is granted, which gives the person certain rights, such as access to a residence permit, the labour market and healthcare (Qualification Directive).

Overturning of the negative first instance decision by the court.



ASYLUM AND THE EU

A DUTY TO PROTECT

- Asylum is granted to people fleeing persecution or serious harm. Asylum is a fundamental right; granting it is an international obligation under the 1951 Geneva convention on the protection of refugees.
 - In an area of open borders and freedom of movement, we have to have a joint approach to asylum across the EU.
 - Asylum flows are not constant, nor are they evenly distributed across the EU. They have, for example, varied from a peak of 425 000 applications for the EU-27 in 2001 down to under 200 000 in 2006. In 2012, there were over 330 000.
 - Asylum must not be a lottery. EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar.
- concerned persons are fully respected; it also ensures that detention is only applied as a measure of last resort;
 - *the revised Qualification Directive* clarifies the grounds for granting international protection and therefore will make asylum decisions more robust; it will also improve the access to rights and integration measures for beneficiaries of international protection;
 - *the revised Dublin Regulation* enhances the protection of asylum seekers during the process of establishing the state responsible for examining the application and clarifies the rules governing the relations between states; it creates a system to detect early problems in national asylum or reception systems and address their root causes before they develop into fully fledged crises;
 - *the revised Eurodac Regulation* will allow law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder and terrorism.

THE EU AS AN AREA OF PROTECTION

Since 1999, the EU has been working to create a Common European Asylum System (CEAS) and improve the current legislative framework.

New EU rules have now been agreed, setting out common high standards and stronger cooperation to ensure that asylum seekers are treated equally in an open and fair system — wherever they apply. In short:

- *the revised Asylum Procedures Directive* aims at fairer, quicker and better quality asylum decisions; asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture;
- *the revised Reception Conditions Directive* ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the

ASYLUM PROCEDURES DIRECTIVE

Common safeguards must be ensured for people fleeing persecution and seeking international protection — asylum seekers must have access to fair and efficient asylum procedures.

WHAT IS THE ASYLUM PROCEDURES DIRECTIVE?

The Asylum Procedures Directive ⁽¹⁾ sets out rules on the whole process of claiming asylum, including on: how to apply, how the application will be examined, what help the asylum seeker will be given, how to appeal and whether the appeal will allow the person to stay on the territory, what can be done if the applicant absconds or how to deal with repeated applications.

The previous directive was the lowest common denominator between Member States at the time. The rules were often too vague and derogations allowed Member States to keep their own rules, even if these went below basic agreed standards.

KEY ACHIEVEMENTS

The new Asylum Procedures Directive ⁽²⁾ is much more precise. It creates a coherent system, which ensures that asylum decisions are made more efficiently and more fairly and that all Member States examine applications with a common high-quality standard.

- It sets clearer rules on how to apply for asylum: there have to be specific arrangements, for example at borders, to make sure that everyone who wishes to request asylum can do so quickly and effectively.
- Procedures will be both faster and more efficient. Normally, an asylum procedure will not be longer than 6 months. There will be better training for decision-makers and more early help for the applicant, so that the claim can be fully examined quickly. These investments will save money overall, because asylum seekers will spend less time in state-sponsored reception systems and there will be fewer wrong decisions, so fewer costly appeals.
- Anyone in need of special help — for example because of their age, disability, illness, sexual orientation or traumatic experiences — will receive adequate support, including sufficient time, to explain their claim. Unaccompanied children will be appointed a qualified representative by the national authorities.
- Cases that are unlikely to be well-founded can be dealt with in special procedures ('accelerated' and 'border' procedures). There are clear rules on when these procedures can be applied, to avoid well-founded cases being covered. Unaccompanied children seeking asylum and victims of torture benefit from special treatment in this respect.
- Rules on appeals in front of courts are much clearer than previously. Currently, EU law is vague and national systems do not always guarantee enough access to courts. As a result, many cases end up in the European Court of Human Rights in Strasbourg, which is costly and creates legal uncertainty. The new rules fully comply with fundamental rights and should reduce pressure on the Strasbourg court.
- Member States will also become better equipped to deal with abusive claims, in particular with repetitive applications by the same person. Someone who does not need protection will no longer be able to prevent removal indefinitely by continuously making new asylum applications.

⁽¹⁾ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

⁽²⁾ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (applicable from 21 July 2015).

RECEPTION CONDITIONS DIRECTIVE

Asylum seekers waiting for a decision on their application must be provided with certain necessities that guarantee them a dignified standard of living.

WHAT IS THE RECEPTION CONDITIONS DIRECTIVE?

The Reception Conditions Directive ⁽¹⁾ deals with access to reception conditions for asylum seekers while they wait for the examination of their claim. It ensures that applicants have access to housing, food, healthcare and employment, as well as medical and psychological care.

In the past, diverging practices among Member States could, however, lead to an inadequate level of material reception conditions for asylum seekers.

KEY ACHIEVEMENTS

The new Reception Conditions Directive ⁽²⁾ aims to ensure better as well as more harmonised standards of reception conditions throughout the Union.

- For the first time, detailed common rules have been adopted on the issue of the detention of asylum seekers, ensuring that their fundamental rights are fully respected. In particular, it:
 - includes an exhaustive list of detention grounds that will help to avoid arbitrary detention practices and limits detention to as short a period of time as possible;
 - restricts the detention of vulnerable persons, in particular minors;
 - includes important legal guarantees such as access to free legal assistance and information in writing when lodging an appeal against a detention order;

- introduces specific reception conditions for detention facilities, such as access to fresh air and communication with lawyers, non-governmental organisations (NGOs) and family members.

- The new directive also clarifies the obligation to conduct an individual assessment in order to identify the special reception needs of vulnerable persons. It provides particular attention to unaccompanied minors and victims of torture and ensures that vulnerable asylum seekers can also access psychological support. Finally, it includes rules on the qualifications of the representatives for unaccompanied minors.
- Access to employment for an asylum seeker must now be granted within a maximum period of 9 months.

⁽¹⁾ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

⁽²⁾ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (applicable from 21 July 2015).

QUALIFICATION DIRECTIVE

Before a person can receive asylum, he/she must be recognised as a refugee or as a beneficiary of subsidiary protection.

WHAT IS THE QUALIFICATION DIRECTIVE?

The Qualification Directive ⁽¹⁾ specifies the grounds for granting international protection.

Its provisions also foresee a series of rights on protection from *refoulement*, residence permits, travel documents, access to employment, access to education, social welfare, healthcare, access to accommodation and access to integration facilities, as well as specific provisions for children and vulnerable persons.

The minimum standards in the previous directive were to a certain extent vague, which maintained divergences in national asylum legislation and practices. The chances of a person being granted international protection could vary tremendously depending on the Member State processing the asylum application.

KEY ACHIEVEMENTS

The new Qualification Directive ⁽²⁾ will contribute to improve the quality of the decision-making and ensure that people fleeing persecution, wars and torture are treated fairly, in a uniform manner.

- It clarifies the grounds for granting international protection and leads to more robust determinations, thus improving the efficiency of the asylum process and prevention of fraud, and ensures coherence with the European court's judgments.
- It approximates to a large extent the rights granted to all beneficiaries of international protection (recognised refugees and

recipients of so-called 'subsidiary protection') on access to employment and healthcare. It also extends the duration of validity of residence permits for beneficiaries of subsidiary protection.

- It ensures a better taking into account of the best interests of the child and of gender-related aspects in the assessment of asylum applications, as well as in the implementation of the rules on the content of international protection.
- It improves the access of beneficiaries of international protection to rights and integration measures. It better takes into account the specific practical difficulties faced by beneficiaries of international protection.

⁽¹⁾ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

⁽²⁾ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (applicable from 21 December 2013).

DUBLIN REGULATION

Every single asylum application lodged within EU territory needs to be examined — each EU Member State must be able to determine if and when it is responsible for handling an asylum claim.

WHAT IS THE DUBLIN REGULATION?

The core principle of the Dublin Regulation ⁽¹⁾ is that the responsibility for examining claim lies primarily with the Member State which played the greatest part in the applicant's entry or residence in the EU. The criteria for establishing responsibility run, in hierarchical order, from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered the EU irregularly or regularly.

Experience of the previous system has, however, shown the need to better address situations of particular pressure on Member States' reception capacities and asylum systems.

KEY ACHIEVEMENTS

The new Dublin Regulation ⁽²⁾ contains sound procedures for the protection of asylum applicants and improves the system's efficiency through:

- an early warning, preparedness and crisis management mechanism, geared to addressing the root dysfunctional causes of national asylum systems or problems stemming from particular pressures;
- a series of provisions on the protection of applicants, such as compulsory personal interviews, guarantees for minors (including a detailed description of the factors that should lay at the basis of assessing a child's best interests) and extended possibilities of reunifying them with relatives;
- the possibility for appeals to suspend the execution of the transfer for the period when the appeal is judged, together with the guarantee of the right for a person to remain on the territory pending the decision of a court on the suspension of the transfer pending the appeal;
- an obligation to ensure legal assistance free of charge upon request;
- a single ground for detention in case of risk of absconding; strict limitation of the duration of detention;
- the possibility for asylum seekers that could in some cases be considered irregular migrants and returned under the Return Directive to be treated under the Dublin procedure — thus giving these persons more protection than the Return Directive;
- an obligation to guarantee the right to appeal against a transfer decision;
- more legal clarity on procedures between Member States — e.g. exhaustive and clearer deadlines. The entire Dublin procedure cannot last longer than 11 months to take charge of a person or 9 months to take him/her back (except for absconding or where the person is imprisoned).

⁽¹⁾ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

⁽²⁾ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (applicable from 1 January 2014).

EURODAC REGULATION

Eurodac makes it easier for EU Member States to determine responsibility for examining an asylum application by comparing fingerprint datasets.

WHAT IS EURODAC?

The Eurodac Regulation ⁽¹⁾ establishes an EU asylum fingerprint database. When someone applies for asylum, no matter where they are in the EU, their fingerprints are transmitted to the Eurodac central system. Eurodac has been operating since 2003 and has proved a very successful IT tool.

Some updates were, however, required, in particular to reduce the delay of transmission by some Member States, to address data protection concerns and to help combat terrorism and serious crime.

KEY ACHIEVEMENTS

The new regulation ⁽²⁾ improves the regular functioning of Eurodac.

- It sets new time limits for fingerprint data to be transmitted, reducing the time which elapses between the taking and sending of fingerprints to the central unit of Eurodac.
- It also ensures full compatibility with the latest asylum legislation and better addresses data protection requirements.
- Until now, the Eurodac database could only be used for asylum purposes. The new regulation allows national police forces and

Europol to compare fingerprints linked to criminal investigations with those contained in Eurodac. This will take place under strictly controlled circumstances and only for the purpose of the prevention, detection and investigation of serious crimes and terrorism.

- Specific safeguards include a requirement to check all available criminal records databases first and limiting searches only to the most serious crimes, such as murder and terrorism.
- In addition, prior to making a Eurodac check, law enforcement authorities must undertake a comparison of fingerprints against the Visa Information System (where permitted).
- Law enforcement checks may not be made in a systematic way, but only as a last resort when all the conditions for access are fulfilled.
- No data received from Eurodac may be shared with third countries.

⁽¹⁾ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin convention.

⁽²⁾ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) (applicable from 20 July 2015).

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