



## ASYLUM POLICY

The aim of EU asylum policy is to harmonise asylum procedures in the Member States by establishing common asylum arrangements, with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.

### LEGAL BASIS

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

### OBJECTIVES

The objectives are to develop a common policy on asylum, subsidiary protection and temporary protection, with a view to offering an appropriate status to all third-country nationals who need international protection, and to ensure that the principle of non-refoulement is observed. This policy must be consistent with the 1951 Geneva Convention and the 1967 Protocol thereto. Neither the Treaty nor the Charter provides a definition of the terms ‘asylum’ and ‘refugee’. They both refer explicitly to the Geneva Convention of 28 July 1951 and the Protocol thereto of 31 January 1967.

### ACHIEVEMENTS

#### A. Advances under the Treaties of Amsterdam and Nice

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.

In 2001 the Treaty of Nice provided that, within five years of its entry into force, the Council should adopt measures on a number of fronts, in particular criteria and mechanisms for determining which Member State is responsible for considering an application for asylum made by a third-country national within the EU, as well as certain minimum standards (in relation to the reception of asylum seekers, the status of refugees and procedures).

The Treaty stipulated that the Council should act unanimously, after consulting Parliament, when defining the common rules and basic principles governing these issues. It provided that, after this initial phase, the Council might decide that the normal codecision procedure should apply and that it should thus henceforth adopt its decisions by qualified majority. The Council took a decision to that effect at the end of 2004 and the codecision procedure has applied since 2005.

## **B. The Treaty of Lisbon**

The Treaty of Lisbon changed the situation by transforming the measures on asylum into a common policy. Its objective is no longer simply the establishment of minimum standards, but rather the creation of a common system comprising a uniform status and uniform procedures.

This common system must include:

- a uniform status of asylum,
- a uniform status of subsidiary protection,
- a common system of temporary protection,
- common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status,
- criteria and mechanisms for determining which Member State is responsible for considering an application,
- standards concerning reception conditions,
- partnership and cooperation with third countries.

The Treaty did not make any changes to the decision-making procedure within the EU.

However, the arrangements for judicial oversight by the Court of Justice of the European Union 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 should enable the Court of Justice to develop a larger body of case law in the field of asylum.

## **C. European Council programmes**

The series of programmes adopted by the European Council have had a far-reaching impact on the implementation of European asylum policy.

With the adoption of the Tampere Programme in October 1999, the European Council decided that the common European system should be implemented in two phases. In November 2004, the Hague Programme called for the second-phase instruments and measures to be adopted by the end of 2010.

The European Pact on Migration and Asylum, adopted on 16 October 2008, ‘solemnly reiterates that any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention’. It calls for proposals aimed at establishing ‘in 2010 if possible and in 2012 at the latest, a single asylum procedure comprising common guarantees and [...] adopting a uniform status for refugees and the beneficiaries of subsidiary protection’.

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

The Lisbon Treaty formally recognises the European Council’s pre-eminent role in ‘[defining] the strategic guidelines for legislative and operational planning within the area of freedom, security and justice’ (Article 68 TFEU). In June 2014, the European Council defined these guidelines for the coming years, building on the progress achieved by the Stockholm

Programme. They stress that the full transposition and effective implementation of the Common European Asylum System (CEAS) is an absolute priority.

**D.** The main existing legal instruments

- Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece;
- Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece;
- Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC<sup>[1]</sup>;
- Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management<sup>[2]</sup>;
- 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<sup>[3]</sup> (Regulation (EU) No 603/2013 will start applying two years after its entry into force and repeal the previous Council Regulation (EC) No 2725/2000 and its implementing Regulation (EC) No 407/2002);
- 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<sup>[4]</sup> (Directive 2013/33/EU will repeal Council Directive 2003/9/EC with effect from 21 July 2015);
- 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<sup>[5]</sup> (Directive 2013/32/EU will repeal the previous Council Directive 2005/85/EC with effect from 21 July 2015);
- 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<sup>[6]</sup>

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[1]OJ L 150, 20.5.2014, p. 168.

[2]OJ L 150, 20.5.2014, p. 112.

[3]OJ L 180, 29.6.2013, p. 1.

[4]OJ L 180, 29.6.2013, p. 96.

[5]OJ L 180, 29.6.2013, p. 60.

[6]OJ L 337, 20.12.2011, p. 9.

(Directive 2011/95/EU will repeal the previous Council Directive 2004/83/EC with effect from 21 December 2013);

- Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office<sup>[7]</sup>;
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>[8]</sup>;
- 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<sup>[9]</sup>.

In response to the human tragedy unfolding across the Mediterranean, the Commission adopted the European Agenda on Migration in May 2015<sup>[10]</sup>, aimed at strengthening the common asylum policy. It sets out further steps towards a reform of the Common European Asylum System, which were presented in two packages of legislative proposals in May and July 2016. The main pending proposals are:

- Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU ([COM\(2016\) 0467](#));
- Proposal for a Regulation of the European Parliament and of the Council 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents ([COM\(2016\) 0466](#));
- Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) ([COM\(2016\) 0465](#));
- Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council ([COM\(2016\) 0468](#));
- 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) ([COM\(2016\) 0270](#));
- 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

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[7]OJ L 132, 29.5.2010, p. 11.

[8]OJ L 348, 24.12.2008, p. 98.

[9]OJ L 212, 7.8.2001, p. 12.

[10]See Fact Sheet [5.12.3](#).

- for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) ([COM\(2016\) 0272](#));
- 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 ([COM\(2016\) 0271](#));
  - Proposal for a regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending 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 ([COM\(2015\) 0450](#));
  - 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 ([COM\(2015\) 0452](#)).

## **ROLE OF THE EUROPEAN PARLIAMENT**

Since 2005 the European Parliament has been a co-legislator in asylum-related legislation and therefore on an equal footing with the Council of the EU. Moreover, the resolutions of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, of 10 September 2015 on migration and refugees in Europe, of 11 September 2012 on enhanced intra-EU solidarity in the field of asylum, of 21 June 2007 on asylum: practical cooperation, quality of decision-making in the common European asylum system, of 2 September 2008 on the evaluation of the Dublin system and of 10 March 2009 on the future of the Common European Asylum System provide an overview of Parliament's main positions and concerns.

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 emphasised that detention should be possible only in very clearly defined exceptional circumstances and that there should be a right of appeal against it before a court. It has supported the creation of a European Asylum Support Office.

Parliament can also bring an action for annulment before the Court of Justice. This instrument was successfully used to obtain the annulment of the provisions concerning the arrangements for adopting the common list of third countries regarded as safe countries of origin and safe third countries in Europe provided for in Directive 2005/85/EC (ECJ, judgment of 6 May 2008, Case C-133/06).

Parliament has, moreover, organised a series of visits to reception centres and detention centres in the Member States and has highlighted the shortcomings in the Member States' application of the existing legislation.

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