

Asylum Policy

The aim of EU asylum policy is to harmonise asylum procedures in the Member States by establishing common asylum arrangements. The Lisbon Treaty introduces significant changes. Its implementation is spelled out in the Stockholm Programme.

Legal basis

- Articles 67(2) and 78 TFEU;
- 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:

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- 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. The 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 period 2010-2014, 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.

D. The main existing legal instruments and proposals pending are:

- Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund, OJ L 252, 6.10.2000, p. 12;

- 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, OJ L 180, 29.6.2013 (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);
- 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, OJ L 212, 7.8.2001, p. 12;
- 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, OJ L 180, 29.6.2013 (Directive 2013/33/EU will repeal Council Directive 2003/9/EC with effect from 21 July 2015);
- 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, OJ L 180, 29.6.2013 (Regulation (EU) No 604/2013 will start applying six months after its entry into force and repeal the previous Council Regulation (EC) No 343/2003);
- 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, OJ L 337, 20.12.2011. (Directive 2011/95/EU will repeal the previous Council Directive 2004/83/EC with effect from 21 December 2013.);
- 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, OJ L 180, 29.6.2013 (Directive 2013/32/EU will repeal the previous Council Directive 2005/85/EC with effect from 21 July 2015);
- Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ and repealing Council Decision 2004/904/EC, OJ L 144, 6.6.2007;
- Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’, OJ L 144, 6.6.2007;

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- Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’, OJ L 168, 28.6.2007;
 - 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;
 - Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132, 29.5.2010;
 - Proposal for a regulation of the European Parliament and of the Council laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (COM(2011)0752 – 2011/0367 (COD));
 - Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund (COM(2011)0751 – 2011/0366 (COD)).

Role of the European Parliament

The resolutions 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. Its resolution of 5 February 2009 on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008 highlights the shortcomings in the Member States’ application of the existing legislation.

As part of the presentation of the new ‘asylum package’ due to lead to the establishment of the Common European Asylum System, the European Parliament, acting in its capacity as co-legislator, gave its opinion at first reading on 7 May 2009 on the first four proposals presented by the Commission: on minimum reception standards, Eurodac, determining the Member State responsible for considering an application, and the European Asylum Support Office. In general,

subject to the tabling of a series of amendments, the European Parliament's rapporteurs were satisfied with the Commission's proposals and its overall approach¹. After more than two years of negotiations and following the adoption in 2010 of Regulation EU No 439/2010 establishing a European Asylum Support Office and in late 2011 of Directive 2011/95/EU on standards for qualification (see above: Achievements, section D), a political agreement was reached between the Council and Parliament on Directive 2013/33/EU laying down minimum standards for the reception of asylum seekers and Directive 2013/32/EU on common procedures for granting and withdrawing international protection. The establishment of the new common European asylum system was completed with the adoption of the amended Dublin Regulation EU No 604/2013 and Regulation EU No 603/2013 on the establishment of Eurodac in June 2013.

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¹ Minimum reception standards: A. Masip Hidalgo, 2008/0244; Eurodac: N. Vlad Popa, 2008/0242; European Asylum Support Office: J. Lambert, 2009/0027; Member State responsible for examining an application: J. Hennis-Plasschaert, 2008/0243; European Refugee Fund: B. Dührkop Dührkop, 2009/0026.