

Informing the Asylum Debate

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Many areas of EU policy will be the subject of critical debate and discussion in the campaigns leading up to the European Parliament elections on 4-7 June 2009. Although the specific themes and the relative importance attached to these themes will vary substantially from one member state to another, the issues that have become EU policy and law over the past ten years in the Area of Freedom, Security and Justice deserve informed and consistent analysis. These policies touch the core of every individual's right to liberty and security in an enlarged Europe.



This Background Briefing focuses on asylum. After outlining the current state of play of EU asylum policy and the next steps that are expected to be taken in the near future, it sets the scene with the key shortcomings and issues surrounding this policy domain. The concluding section highlights the main challenges in this field and puts forward key recommendations for the next five years.



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CEPS Background Briefing
In preparation for the European Parliament Elections

1. State of Play and Next Steps

Following the entry into force of the Treaty of Amsterdam in 1999, the EU has engaged in a process of legislative harmonisation in the area of asylum and refugee protection. Since then the EU has adopted measures on the qualification, and status of third-country nationals and stateless persons as refugees,¹ the reception of asylum-seekers,² the procedures for granting and withdrawing the refugee status³ and the mechanisms for determining the member states responsible for analysing the asylum application lodged in one of the member states⁴ (for a full list of measures adopted in the field of asylum, see Annex).

The EU legal framework on asylum is characterised by the principle of minimum common standards, which means that regulations and directives set out the lowest protection threshold that member states must satisfy. For instance, the Directive on temporary protection in the event of a mass influx of displaced persons⁵ or the one on the reception of asylum-seekers only cover the most basic of protection needs. The same applies to the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection (i.e. subsidiary protection) and the procedures in member states for granting and withdrawing refugee status.

Another important feature is that anyone seeking protection on the territory of the EU gets only one chance to have their application considered and the member states determine which member state is responsible. Moreover, while negative decisions refusing asylum are recognised by all member states, positive decisions granting asylum to an individual are not recognised beyond the state that grants protection.

As the country where asylum-seekers will be required to make their claim is most usually the first country through which they pass in the EU, member states with long sea or land borders with third countries

tend to receive the majority of asylum applications. According to FRONTEX, the European Agency for the Management of Operational Cooperation at the External Borders, member states reported nearly 150,000 asylum claims in 2007. With almost 35,000 applications, Sweden received most of these claims, followed by Greece and the UK (both with almost 20,000). Belgium and Poland reported more than 10,000 claims each, while the other member states reported fewer than 10,000 claims. Most asylum claims were filed by Iraqi nationals (35,000), followed by nationals from the Russian Federation.⁶ In 2008, according to the intergovernmental organisation Consultations on Migration, Asylum and Refugees, France received the most asylum applications (42,513) followed by the UK (30,547) and Sweden (24,353).

Having launched the process towards the Common European Asylum System (CEAS) in 1999, the Council and the Commission are proceeding towards full harmonisation of the system beyond minimum standards. The Commission, in an attempt to achieve a higher common standard of protection and greater equality in protection across the EU, as well as to ensure a higher degree of solidarity between EU member states, proposed a number of amendments to existing asylum instruments⁷ in December 2008 and more are promised for June 2009. Lastly, the Stockholm Programme, which will provide the political blueprint for the next five years in justice and home affairs policies, will be adopted during the Swedish Presidency at the end of 2009. The first step toward the Programme will take the shape of a Commission Communication to be published in June.

6 FRONTEX General Report 2007.

7 These range from the European Commission's amendments to the Dublin Regulation, which determines the member state responsible for an asylum application (Proposal for a Regulation 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(2008) 820 final, Brussels, 3.12.2008) to the Directive on reception conditions for asylum-seekers (Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers, COM(2008) 815, Brussels, 3.12.2008). They further extend to the Eurodac Regulation, concerning the database containing the fingerprints of asylum-seekers that supports the operation of the Dublin Regulation (Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation No. [.../...], COM(2008) 825 final, Brussels, 3.12.2008).

1 Directive 2004/83/EC (OJ 2004 L 304/12)

2 Directive 2003/9/EC (OJ 2003 L 31/18)

3 Directive 2005/85/EC (OJ 2005 L 326/13).

4 Regulation (EC) No 343/2003 (OJ 2003 L 50/1).

5 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.

2. Shortcomings and Issues on Asylum

Until 1999, the UN Convention on the Status of Refugees 1951 and its 1967 Protocol had been the main reference for national legislation on the matter of granting asylum, supplemented by the UN Convention against Torture 1984 and the European Convention on Human Rights. Since 1999, a fairly complete set of measures on asylum, including a definition of who is entitled to protection in the EU and a minimum standard of procedures has been adopted. Officials must follow these when considering an asylum claim, as they form the backbone of a CEAS.

The creation of a CEAS, however, has not yet produced common outcomes resulting from asylum decisions taken in different member states. This lack of consistency even extends to refugees from the same country facing similar circumstances in their country of origin. Indeed, according to the office of the United Nations High Commissioner for Refugees (UNHCR), which keeps statistics on protection rates, there are increasing divergences among the member states as regards granting protection to nationals even of the same country. For instance, regarding Afghan nationals, the world's largest single group of refugees, in 2007 Italy gave protection to 98% of the Afghans who sought it there,⁸ the UK gave protection to 42%⁹ and Greece did not give protection to even one Afghan.¹⁰

Doubts arise also as to whether refugees can reach the EU at all to seek protection. In order to be recognised as a refugee, an individual must be outside his or her country of nationality and, paradoxically, the leading countries of origin of refugees worldwide (Afghanistan, Iraq, Colombia, Sudan and Somalia)¹¹ are on the EU visa black list. As a consequence, whether a refugee or not, a national of any of these countries cannot come to the EU without a visa (and there are no rules on issuing visas to seek asylum). Additionally, carrier sanctions dissuade airlines and ships from carrying persons without visas. Hence, irregular arrival in the EU is the only option for many refugees.

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“The situation of asylum-seekers in the EU is characterised by social exclusion, not least because they often have no access to the labour market or education.”

3. Future Challenges and Recommendations

The following have been identified as major challenges for EU asylum policy in the future:

First, the CEAS should be modified so that the country in which an asylum-seeker makes his or her protection claim is the one responsible for determining the substance of that claim. The system of sending asylum-seekers from one state to another so that their applications can be determined elsewhere in the EU is counterproductive, expensive and inhumane for the individual. This is best exemplified by the current recognition rates, according to which the CEAS as it now stands produces more divergencies among member states than seven years ago. Greater consistency is needed as regards asylum procedures across the EU. It is unacceptable that the differences in treatment of asylum-seekers from the same countries are so marked.

Second, the situation of asylum-seekers in the EU is characterised by social exclusion, not least because they often have no access to the labour market or education. Asylum-seekers should be given the right to work and study at the very latest after six months of presence in the territory of a member state. Exclusion from the mechanisms of social participation for a period that is any longer is not consistent with the right to dignity contained in the Charter of Fundamental Rights.

Third, Directive 2005/85 on asylum procedures contains an acceptable general asylum procedure for the EU. Yet all the exceptional categories, such as safe third country, European safe third country and safe country of origin, have the effect of diminishing or excluding the general procedure for specific classes of asylum-seekers. All asylum-seekers should be entitled to a fair and effective procedure. The exceptional categories should be removed from the Directive.

Fourth, there must be mutual recognition of refugee status across the EU, no matter which member state recognised the individual's protection claim. If there really is a CEAS, member states must demonstrate their confidence in others' decisions. An effective monitoring system needs to be established in order to ensure that asylum-seekers and refugees actually enjoy the rights they are entitled to under the CEAS.

8 663 applications.

9 2,720 applications.

10 1,061 applications.

11 UNHCR data.

ANNEX*

Adopted measures (UK opted in to all; Ireland opted in to all except 4)

1. Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund (OJ 2000 L 252/12).
2. 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 (OJ 2000 L 316/1).
3. 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 2001 L 212/12).
4. Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ 2002 L 62/1).
5. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (OJ 2003 L 31/18).
6. 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 (OJ 2003 L 50/1).
7. Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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 (OJ 2003 L 222/3).
8. 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 (OJ 2004 L 304/12).
9. 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 and repealing Council Decision 2004/904/EC (OJ 2007 L 144/1).
10. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326/13).

Proposed measures

1. Council Directive amending Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents to extend its scope to beneficiaries of international protection, [COM (2007) 298, 6 June 2007].
2. Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum-seekers; 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; and Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints [COM (2008) 815, 820, 825, December 2008].
3. Regulation of the European Parliament and of the Council establishing a European Asylum Support Office and Decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions, [COM (2009) 66 and 67, Feb. 2009].

Recent communications

1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions - Policy plan on asylum - An integrated approach to protection across the EU, [COM (2008) 360, June 2008].

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