



The Common European Asylum System: A Summary

Introduction

The main provisions of the Common European Asylum System, so far, are: the Directive on the definition of a Refugee; the Directive on Reception Conditions for Refugees; Dublin II, which determines which Member State of the EU is responsible for examining an application for asylum and replaces the Dublin Convention; “Eurodac”, a system which includes a central EU unit and fingerprint database to support the functioning of the Dublin Convention and Dublin II; and the Asylum Procedures Directive, which is currently published only in draft.

There is also the Temporary Protection Directive, which sets down procedures to be taken in the event of a mass influx of asylum seekers, and a European Refugee Fund which supplements the actions of Member States in relation to asylum.

Summary of the Paper

Following the Amsterdam Treaty of 1997, the European Council was required to adopt, by May 2004; “measures on asylum, in accordance with the 1951 Geneva Convention and the 1967 Protocol relating to the status of refugees and other relevant treaties” in the following areas:

- a) criteria and mechanisms for determining Member State responsibility for considering an asylum application;
- b) minimum standards on the reception of asylum seekers;
- c) minimum standards with respect to the refugee definition;
- d) minimum procedural standards for granting or withdrawing refugee status.¹

The Treaty also required the Council to adopt measures relating to minimum standards for temporary protection for displaced persons “who cannot return to their country of origin and for persons who otherwise need international protection”; and “promoting a balance of effort” between Member States accepting refugees and displaced persons. This resulted in the adoption of a Directive on temporary protection in 2001.

¹ Article 63 of the Treaty Establishing the European Community (“TEC”)

Further to the provisions of the Amsterdam Treaty, at Tampere, in October 1999, the European Council agreed “to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention...”.

On this basis, the Council has already established a European Refugee Fund; adopted a Regulation determining responsibility for considering an asylum application (and a further Regulation laying down detailed rules for its application) called “Dublin II”, because it revised and replaced the earlier Dublin Convention; and established “Eurodac”, a system that includes a central EU database for the purpose of comparing the fingerprints of third-country nationals between Member States.

The European Council has also already adopted a Directive on reception conditions for asylum seekers.

A Directive on the definition of a refugee was formally adopted by the Council on 30 April 2004 (but this is not yet a legally binding act). On the same day, the Council reached political agreement on a directive on asylum procedures.

The UK has opted into all the legislation that has so far come into force, as well as the two further Directives that have been agreed. Ireland has opted into the Refugee Fund, Dublin II, Eurodac, the Directive on the Definition of a Refugee and the Asylum Procedures Directive. Denmark has not opted into any of the provisions.

The Provisions

The European Refugee Fund

The European Refugee Fund was set up, from 1 January 2000 to 31 December 2004, by The Council Decision establishing a European Refugee Fund (2000/596/EC).

Summary:

- The Fund is designed to support and encourage the efforts of Member States in receiving and bearing the consequences of receiving refugees and displaced persons.
- It is to be funded out of the EU’s annual budget, following an initial 216m euro sum for implementing the Decision.
- The Fund is to support Member States’ actions relating to: reception conditions; integration; and repatriation.
- Up to 5% of the Fund’s resources may be used to finance ‘innovatory action’ or action of interest to the Community as a whole, such as studies and assessments.
- The Fund may also be used to finance emergency measures in the event of a sudden mass influx of refugees/displaced persons, but only for a maximum period of 6 months.
- Every Member State must make a request to the European Commission annually justifying the prospective use of its share of the Fund’s resources for the forthcoming year.

- Every Member State is to be allocated 500,000 euros from the fund in its first year, reducing by 100,000 euros every year; plus a further sum in proportion to the number of persons admitted in various categories.
- The operation of the Fund is to be based on the principle of solidarity that underlies the Common European Asylum System.

Full text available in pdf format under the bottom link of the following webpage:
<http://europa.eu.int/eur-lex/lex/JOhtml.do?uri=OJ:L:2000:252:SOM:EN:HTML>

The Proposal for a Council Decision establishing the European Refugee Fund for the Period 2005-2010 has yet to be finally adopted. Assuming that final adoption takes place, the Decision will extend the Fund for a further 5 years, strengthening, formalising and adapting it to take account of the development of the Common European Asylum System.

Full text available at:

<http://www.europa.eu.int/cgi-bin/eur-lex/udl.pl?REQUEST=Service-Search&LANGUAGE=en&GUILANGUAGE=en&SERVICE=all&COLLECTION=com&DOCID=504PC0102>

The Temporary Protection Directive

Full Title: Council Directive 2001/55/EC on 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.

Summary:

- The Temporary Protection Directive is the EU's long-term response to the refugee crisis in Kosovo during the 1990s.
- It is intended to prevent the asylum systems of EU Member States from being overwhelmed in the event of a similar crisis in the future.
- The right to apply for asylum follows from the granting of temporary protection.
- Any EU Member State may introduce greater provision than that provided for in the Directive, but not less, as a matter of national law.
- The existence of a mass influx of persons will be established by a Council Decision, taken by qualified majority voting ("QMV") which should also establish conditions for the expiry of the Decision.
- In the event of a mass influx, the UNHCR and other relevant international organisations will be regularly consulted.
- The duration of temporary protection is one year, but this may be extended by six monthly periods for a maximum of one year on the basis of QMV.
- A period of temporary protection may be ended at any time by a Council Decision based on QMV.
- Provision should be made for the return of persons granted temporary protection.
- A "solidarity mechanism" should provide for burden-sharing between the Member States in respect of financial cost and actual reception of persons.

- Member States may exclude from consideration for temporary protection serious criminals and persons suspected of being serious criminals.
- Persons not granted temporary protection or the right of family reunion are entitled to challenge the decision through the (national) courts.
- Persons granted temporary protection will be issued with a residence permit for the Member State that takes them, but EU free movement provisions will not apply.
- Member States must allow persons granted temporary protection access to the labour market.
- Member States must make basic welfare, medical and housing provision for persons granted temporary protection.
- Member States must reunite family members initially dispersed among different Member States.
- The deadline for implementation of the Directive was 31 December 2002.

Full text at:

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001L0055&model=guichett

The Reception Directive

Full Title: Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers.

Summary:

- The Directive is designed to harmonize minimum standards in all Member States so as to help deter so-called asylum shopping.
- These must include conditions adequate for health and subsistence.
- The provision of such material conditions may be means-tested.
- These conditions include: accommodation (which should not be changed unless necessary); protection of family life; communication with relatives, legal advisers, representatives of the UNHCR and relevant non-governmental organisations.
- Member States may introduce higher minimum standards than those provided for in the Directive, but not lower ones.
- In exceptional circumstances, a Member State may derogate from the standards laid down in the Directive, but only for as short a period as possible.
- Asylum seekers may be confined to a particular place within a Member State.
- Member States may make provision of facilities subject to actual residence by the applicant in a specific place.
- Member States may withdraw the provision of minimum reception conditions if an asylum seeker does not comply with reporting duties/provide information/appear for interview as required within a reasonable period laid down in national law.
- Member States may also refuse facilities in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in the Member State.
- Member States may require medical screening for applicants on public health grounds.

- Asylum applicants may be denied access to the labour market for up to one year, at which time access must be granted unless the delay in the decision-making process can be attributed to the applicant.
- The deadline for implementation of the Directive is 6 February 2005.

Full text at:

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32003L0009&model=guichett

Dublin II

Full Title: 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.

Summary:

- This Regulation replaced the Dublin Convention of 1990, which determined which Member State of the EU was responsible for considering an asylum application.
- The preamble to the Regulation states that it “observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union”; a reference to Part II of the European Constitution.
- Under the Regulation, Member States retain the right to send asylum seekers to a third country.
- Which Member State is responsible for an asylum application is determined by the situation obtaining at the time the application was made.
- Where the asylum seeker has a valid residence permit, the Member State which issued it is responsible for considering the application.
- Where an applicant has entered a Member State irregularly, directly from a third country, that Member State is responsible for considering the application. This responsibility expires 12 months after the irregular entry took place.
- Once that period has expired, the Member State in which the application is lodged is responsible for considering the application, provided the applicant has lived in that Member State for at least 5 months prior to making the application.
- If an applicant enters a Member State in which his need for a visa is waived, then that Member State is responsible for considering the application. If, however, he moves to a second such Member State, where he makes his application, the second Member State becomes responsible.
- Where no Member State can be deemed responsible on the basis of any other provisions of the Regulation, Article 13 provides that the first Member State where an application was lodged is responsible for considering it.
- Once a Member State is deemed responsible for considering an application, it is also obliged to take back the applicant from another Member State.
- There is a limitation period of 3 months in which a Member State may request another Member State to take charge of an applicant on the basis of the Regulation.

- The Regulation entered into force on 16 March 2003. It applied to asylum applications (and requests to take back applicants) made after 1 September 2003.

Full text at:

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32003R0343&model=guichett

The Application of Dublin II Regulation

Full Title: Commission Regulation (EC) No 1560/2003 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.

Full text at:

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32003R1560&model=guichett

The Eurodac Regulation

Full Title: Regulation (EC) No 2725/2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention.

Summary:

- The Regulation establishes a Central Unit and a computerised central database within the European Commission for comparing the fingerprints of applicants for asylum as well as several categories of third-country nationals, plus means of data transmission between the Member States and the database.
- Data obtained under Eurodac may not be used for any other purpose.
- Eurodac shall provide quarterly statistics based on its activities, broken down by Member State.
- A full set of fingerprints is to be taken from every asylum seeker over the age of 14, in all participating Member States.
- All fingerprint data, together with basic reference data for the individual concerned, is to be immediately recorded on the database, where it will be compared with fingerprint data from other Member States.
- If there is a match between two sets of fingerprint data, this will be used in the determination of which Member State is responsible for processing the individual’s asylum application, under Dublin II.
- Such data are to be stored in the database for 10 years unless the applicant either acquires citizenship of the Union, in which case the data will be erased immediately.
- Similar recording of data is required for every third-country national over the age of 14 who is apprehended by the authorities in connection with the irregular crossing of a Member State’s border, from a third-country, and who is not turned back.

- Data on these individuals will be stored in the database for 2 years unless they: are issued with a residence permit; leave the Union's territory; or acquire citizenship of the Union.
- Member States may transmit to the Central Unit fingerprint data of third-country nationals found illegally present in their territory, for the purposes of checking whether they have previously lodged an application for asylum in another Member State.
- Data on such individuals that is sent to the Central Unit shall not be recorded in the database.
- Once a comparison of the data has been made, the data shall be erased.
- Data relating to an applicant for asylum shall be blocked in the database if that person is recognised and admitted as a refugee in a Member State.
- 5 years after Eurodac starts operations, a decision will be taken as to whether data relating to those recognised and admitted as refugees should be stored for the purpose of comparison or erased once a person has been recognised and admitted as a refugee. Until such time as this decision is made, any data match concerning a person who has been recognised and admitted as a refugee shall not be transmitted and the Central Unit shall return a negative result to the requesting Member State.
- Persons covered by the Regulation are entitled to receive information and to have data held regarding themselves rectified or erased if appropriate.
- To supplement the role of the national supervisory authorities, a joint supervisory authority, with two representatives from each Member State, is to be set up to oversee the Eurodac system. It will come to be replaced by an independent supervisory body, as referred to in Article 286(2) of the Treaty.
- The Regulation entered into force on 15 December 2000.

Full text available in pdf format under the top link on the following webpage:

<http://europa.eu.int/eur-lex/lex/JOhtml.do?uri=OJ:L:2000:316:SOM:EN:HTML>

The Application of Eurodac Regulation

Full Title: Council Regulation (EC) No 407/2002 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.

Full text available in pdf format at: http://www.europa.eu.int/eur-lex/lex/Result.do?arg0=eurodac&arg1=&arg2=&titre=titre&clang=en&RechType=RECH_mot&Submit=Search

The Directive on the Definition of a Refugee

Full Title: Council Document 8043/04. Subject: Council Directive 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.

Summary:

- The Directive is designed to ensure that Member States apply common criteria for the identification of persons in need of international protection and to ensure that a minimum level of benefits is available for them in all Member States so as to help to deter so-called asylum shopping.
- Member States may apply higher standards than those contained in the Directive, but not lower ones.
- Member States must not require an applicant to substantiate every element of his application where he has made the appropriate efforts in his application and has succeeded in establishing his credibility.
- An application may be based on events which have taken place since the applicant left his country of origin. In such a case, the applicant may rely on activities he has engaged in since leaving that country; although Member States may, notwithstanding the Geneva Convention, decide that an applicant will not normally be granted refugee status if he has created by his own decision the circumstances that place him at risk.
- “Actors of persecution or serious harm” in an application include: the State; parties etc. controlling the State or a substantial part of its territory; non-State actors if neither the State nor any other organisation effectively protects the applicant against persecution or serious harm.
- Protection is generally considered to be provided when a State etc. takes reasonable steps, via the criminal justice system, to protect the applicant from persecution etc.
- Member States may decide that an applicant is not in need of international protection if he can reasonably be expected to stay in a part of his country of origin where he would be safe from persecution etc.
- Acts of persecution must be “serious”, but need not be physical in nature. They may take the form of discrimination or disproportionate punishment.
- “Serious harm” must be either life-threatening or involve torture or inhuman or degrading treatment/punishment.
- A person’s refugee status ceases if the circumstances on the basis of which that status was granted no longer exist.
- Someone who has committed a serious crime is excluded from being a refugee.
- Refugee status may be revoked if it transpires that the refugee lied with decisive effect in his application or is a security risk or a serious criminal.
- Member States must respect the principle of “non-refoulement” (i.e. avoid returning applicants to their country of origin) in accordance with their international obligations.
- Member States may reduce or withdraw benefits from family members of refugees on grounds of national security or public order.
- Following the grant of refugee status, a refugee must be granted a renewable residence permit of at least 3 years. In the case of a person granted subsidiary protection, the length of the permit is 1 year, renewable.
- Member States must facilitate travel for refugees and those granted subsidiary protection.
- Member States must allow refugees access to the labour market immediately after they have been granted refugee status.
- Refugees are to receive equal rights to nationals of the Member State in education, accommodation, social welfare and health care. In the case of

those granted temporary protection, the entitlement to social welfare and health care may be reduced to core benefits.

- Refugees must be granted access to integration programmes.
- Refugees and those granted subsidiary protection are entitled to the same free movement rights within their Member State of residence as other legally resident third country nationals. They are not, however, entitled to free movement rights between EU Member States.
- Fewer criteria require to be fulfilled for a grant of subsidiary protection status than for a grant of refugee status. Criteria for exclusion from or cessation of the status of subsidiary protection and the benefits that such status confers are similar to the criteria for refugee status, except where indicated above.
- The Directive will enter into force 20 days after its publication in the Official Journal of the EU.

Full text at:

http://register.consilium.eu.int/servlet/driver?page=Result&lang=EN&typ=Advanced&cmsid=639&ff_COTE_DOCUMENT=8043%2F04&ff_COTE_DOSSIER_INST=&ff_TITRE=&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_DOCUMENT=&dd_DATE_REUNION=&dd_FT_DATE=&fc=REGAISEN&srm=25&md=100&ssf=

The (Draft) Asylum Procedures Directive

Full Title: Council Document 14203/04 Subject: Amended Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

- The main objective of the Directive is to introduce a minimum framework in the EC on procedures for granting and withdrawing refugee status.
- It is based on the premise that convergence of procedural rules for the granting and withdrawing of refugee status should help to limit ‘asylum shopping’ between EU Member States.
- The Directive sets down minimum standards: a Member State may adopt more onerous standards in its national law.
- The Directive is based on the full and inclusive application of the 1951 Refugee Convention and complies with the EU Charter of Fundamental Rights (contained in the European Constitution, which has yet to be approved).
- The Directive guarantees asylum seekers the right to present accurately and pursue their case through all procedural stages as well as the right to stay in the Member State where they made their application (but not including a residence permit) pending a decision; access to an interpreter for submitting their application; a chance to contact the UN High Commissioner for Refugees or an organisation working on its behalf; the right to appropriate notification of a decision; the reasons for that decision, in fact and law; the opportunity to consult a legal adviser or other counsellor; and the right to be informed of their legal position at decisive moments in the course of the procedure.
- Member States must ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

- Member States must not hold a person in detention for the sole reason that they are an asylum seeker. Where an asylum seeker is held in detention, the Member State concerned must provide for the possibility of a speedy judicial review.
- The Directive lays down further, specific guarantees for unaccompanied minors.
- Where an asylum seeker makes a second application without presenting new evidence or arguments, the usual guarantees enjoyed by an applicant do not necessarily apply.
- Where an asylum seeker fails to respond to requests to provide essential information or fails to appear for a personal interview or absconds or fails to comply with reporting duties then, unless the applicant demonstrates within a reasonable time that his failure was due to circumstances beyond his control, they may be taken to have abandoned their application. Member States must be willing to consider re-opening abandoned cases, but may set their own time limits for this. They may not, however, deport such a person contrary to the principle of non-refoulement (returning someone to a country where he may face persecution).
- Member States will be able to keep existing procedures for dealing with applicants at the border. Common rules set down exceptions in these circumstances to the guarantees normally enjoyed by applicants.
- Under the Directive, there will be a list of countries of origin that are presumed safe by EU Member States, unless the applicant can prove that they would not be safe to return there.
- The Directive will establish common criteria for designating third countries as safe countries of origin. Any changes to the list of safe countries, once it is established, will be made by the European Council, following consultation of the European Parliament.
- Member states may retain legislation in force at the time of the adoption of the directive that allows for the national designation of third countries or parts of those countries, other than those on the minimum common list, as safe countries.
- Member States will not be obliged to assess an application for asylum where another country has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country, or to another country which it can be reasonably assumed would provide sufficient protection.
- Member States must ensure that a review of refugee status is set in hand when new elements cast doubt on the validity of this status.
- Where the withdrawal of refugee status from a refugee is being considered on the basis of a change in the conditions on which the recognition was based, Member States must ensure that the refugee is informed of the authorities' intentions, so that the refugee may submit their point of view.
- *Any* decision taken on an application for asylum or withdrawal of refugee status (the Directive gives a list of the various types of decision at different procedural stages) must be susceptible to legal challenge and, if appropriate, an effective legal remedy within the framework of Member States' respective systems.

- The implementation of the Directive will be evaluated at least once every two years.
- Member States must bring into force the laws and other provisions necessary to comply with the Directive within two years of its adoption.
- The UK opted into the Directive by a letter of 24 January 2001. Ireland opted in shortly afterwards. Denmark has stayed out.

Full text at:

http://register.consilium.eu.int/servlet/driver?lang=EN&typ=Advanced&cmsid=639&ff_COTE_DOCUMENT=14203%2F04&ff_COTE_DOSSIER_INST=2000%2F0238+%28CNS%29&ff_TITRE=&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_DOCUMENT=&dd_DATE_REUNION=&dd_FT_DATE=&fc=REGAISEN&sr=25&md=100&ssf=&rc=1&nr=2&page=Detail

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