



## Statewatch Analysis

### The Common European Asylum System: State-of-play update

Steve Peers, Professor of Law, Law School, University of Essex

#### Introduction

A previous Statewatch analysis examined the prospects of the EU agreeing on the legislation to establish a second-phase of a Common European Asylum System (CEAS) by the end of 2012.

To summarise, at time of writing (5 December 2012), with less than four weeks to go to the EU deadline, the EU has already adopted one key measure, the second-phase qualification Directive, back in 2011. It has also adopted certain other connected measures: an amendment to the EU refugee fund regarding resettlement (adopted spring 2012); an extension to the EU's legislation on long-term residents to cover refugees and persons with subsidiary protection (adopted spring 2011); and legislation establishing a European Asylum Support Office (adopted early 2010).

This leaves four legislative proposals outstanding: second-phase legislation concerning reception conditions for asylum-seekers, responsibility for asylum applications, the 'Eurodac' system for taking asylum-seekers' fingerprints, and asylum procedures. The European Parliament (EP) and the Council agreed deals on the first two of these measures in July 2012, although it took until November 2012 to agree on some technical issues concerning implementation of the legislation on responsibility for asylum applications.

However, it is striking that five months after these deals, in particular the agreement on the reception conditions Directive, which did not need to be subject to further negotiations, the Council has not yet taken any further steps towards formal adoption of the legislation concerned. It must be concluded that the Council (in the form of the Presidency and/or the General Secretariat) is either (a) simply incompetent, or (b) deliberately delaying the formal adoption of these measures, in order to place political pressure on the EP as regards the other proposals - particularly as regards law enforcement authorities' access to Eurodac, the EU database of asylum-seekers' fingerprints.

As for the other two measures, the EP has not yet defined its position on Eurodac, as EU political parties are divided on the issue of whether law enforcement authorities should have access to the system. However, the negotiations on the asylum procedures legislation have been ongoing since June.

## Asylum procedures directive

The most recent documents available (see links below) indicate that the EP and the Council have agreed on some of the issues which were outstanding as regards this Directive. In particular, they have apparently agreed on:

- a) several issues related to access to the procedure (Art. 6);
- b) lawyers' access to information (Art. 10(3)(c));
- c) notification re personal interviews (Art. 14);
- d) discriminatory requests re personal interviews (Art. 15(3)(b) and (c));
- e) mandatory recording (Art. 17), where the EP has caved in to the Council's objections, subject to the issue being refused in future ;
- f) identification of victims of torture and violence (Art. 18(4));
- g) details of free information (Art. 19(1));
- h) legal aid on appeal (Art. 21(2)(c));
- i) representatives of unaccompanied minors (Art. 25(1));
- j) time limits for accelerated procedures (Art. 31(7)); and
- k) special rules on admissibility interviews (Art. 34).

However, there are a number of points still outstanding. As in the previous report, these are listed below in two parts: (a) the points which are the most fundamental, and likely to be the most difficult to agree; and (b) other points.

### *Difficult issues:*

- a) the issue of extradition to asylum-seekers' countries of origin (Art. 9(2));
- b) guarantees for applicants with special needs, including exceptions from some procedural rules (Art. 24);
- c) exceptions from some procedural rules for unaccompanied minors (Art. 25(6));
- d) the EP's proposed ban on detention of minors (Art. 26a);
- e) the extended time period for deciding on applications (Art. 31(3));
- f) whether the list of possible accelerated procedures should be exhaustive or not (Art. 31(5));
- g) ruling out certain grounds for accelerated procedures (Art. 31(8));
- h) the list of possible grounds for manifestly unfounded procedures (Art. 32(2));
- i) the existence of the concepts of 'safe country of origin', and so-called 'super-safe third country' (Arts. 36, 37 and 39);
- j) the rules on defining 'safe third countries' (Art. 38);
- k) the exceptions to the right to remain following a repeat application (Art. 41); and
- l) several issues relating to asylum-seekers' status during an appeal, including the right to stay on the territory (Art. 46).

### *Easier issues:*

- a) the definition of applicants with special procedural needs (Art. 2(d));
- b) whether certain decisions must be 'reasoned' (Art. 4(2)(b));
- c) information to applicants (Art. 8(1));
- d) use of information from other international human rights bodies (Art. 10(3)(b) and (d));
- e) applicants' cooperation obligations (Art. 13(1));
- f) searches of applicants (Art. 13(2)(d));
- g) medical examinations of unaccompanied minors (Art. 25(4));
- h) issues related to implied withdrawal of applications (Art. 28);

- i) notifications of the use of emergency exceptions to the Commission (Art. 49);
- j) the frequency of Commission reviews of implementation (Art. 50); and
- k) the extended time period for Member States to comply with the rules on time limits for deciding on applications (2 years or 3 years) (Art. 51(2)).

As compared to the previous state-of-play report, a large number of easier issues have been resolved, but few difficult issues have.

One recent document (15624/12) includes a suggestion from the Council Presidency which would potentially have formed the basis for an overall compromise on many difficult issues. The Presidency suggested that the Council accept a key EP demand - special procedural guarantees (ie exemption from some stringent procedural rules) for victims of torture, et al and unaccompanied minors, unless Member States gave such person legal aid during procedures at first instance. In return, the EP would have accepted the Council's position on the right to remain and appeals procedures. However, it appeared that Member States were not willing to accept this suggestion. But in the most recent paper (17075/12), the Presidency again suggests to the Member States that some form of compromise is necessary on this issue.

It is also clear that discussions on time limits to decide on applications have taken a particular direction. While the EP and the Council both agree that in principle decisions on asylum applications must be taken within six months, both also accept that more time may be needed in particular cases. The Council wants 12 months' extra time, with the possibility of some asylum-seekers' applications being put on hold indefinitely, while the EP supports 6 months' extra time with no further extension possible, and a higher threshold to justify any extended time period. With a view to a compromise, the EP has now suggested a 9-month extra time period, and seems willing to drop its demand for a higher threshold to justify an extension. As for the possibility of indefinite extension, the Council has suggested a total absolute maximum of 2 years to decide on an asylum application (15624/12). Astonishingly, rather than accept this offer (or try to improve it), the EP has now tabled its own amendment which would be *worse* than the Council's offer: it would still allow indefinite postponement of a decision on an asylum application, albeit with more reviews of the situation (17030/12). The position of asylum-seekers in this limbo might at least be ameliorated if they would benefit from the standards which the EU has already agreed will apply to an EU-wide temporary protection system, if one is established - but the EP has not suggested this safeguard.

## Conclusions

It is too soon to say whether the amendment to the asylum procedures directive will be only a marginal improvement on the existing legislation, or a more substantial shift towards higher standards. However, the two recent developments mentioned above are both very unfortunate - the Member States failed (until now, at least) to agree to establish special procedural protection for those asylum-seekers who are in most need, and the EP foolishly passed up the Council's offer to set a final time limit for all asylum decisions. Instead it suggested a possible indefinite wait for a decision - even as the Council was willing to accept the principle (rightly defended by the EP) of an absolute time limit! One

can only hope that the EP's negotiating skills improve sufficiently to ensure that the second-phase Directive entails a solid improvement in this field, in order to guarantee that asylum applications are examined fairly across the European Union.

5 December 2012

**Documents:**

Previous analysis:

<http://www.statewatch.org/analyses/no-204-asylum-procedures.pdf>

Council document 17030/12: (310 pages, 4-column document):

<http://www.statewatch.org/news/2012/dec/eu-council-asylum-procedures-17030-12.pdf>

Council document 15624/12 (332 pages)

<http://www.statewatch.org/news/2012/dec/eu-council-asylum-procedures-15624-12.pdf>

Council document 17075/12

<http://www.statewatch.org/news/2012/dec/eu-council-asylum-procedures-17075-12.pdf>

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