



## Reforming the Common European Asylum System: Frequently asked questions

Brussels, 13 July 2016

### **The Common European Asylum System provides common minimum standards for the treatment of all asylum seekers.**

The [Common European Asylum System](#) provides common minimum standards for the treatment of all asylum seekers. It consists of a legal framework covering all aspects of the asylum process and a support agency - the European Asylum Support Office (EASO). However, in practice, the current system leaves a lot of discretion to Member States, and as a result is still characterised by differing treatment of asylum seekers and varying recognition rates amongst EU Member States. These divergences encourage secondary movements and asylum shopping.

In April 2016, in line with the approach set out in the European Agenda on Migration, the Commission set out steps to be taken towards a more humane, fair and efficient European asylum policy as well as a better managed legal migration policy. In May 2016, the Commission presented a first package of legislative proposals, establishing a sustainable and fair Dublin system for determining the Member State responsible for examining asylum applications, reinforcing the Eurodac system and establishing a European Agency for Asylum.

The functioning of the Common European Asylum System relies on establishing common standards for the examination of applications for international protection and for recognition of protection needs at the European Union level.

The Commission is today proposing to complete the reform of the Common European Asylum System through:

- the establishment of a common EU asylum procedure for all applications for international protection by replacing the current Asylum Procedures Directive with a Regulation;
- ensuring maximum harmonisation of the standards for the qualification and content of protection for refugees and beneficiaries of subsidiary protection by replacing the current Qualification Directive with a Regulation;
- a reform of the Reception Conditions Directive to further harmonise reception conditions of applicants for international protection in the EU.

### **1. A proposal for a new Asylum Procedures Regulation**

The [Asylum Procedures Directive](#) establishes the procedure and safeguards to be applied during the asylum procedure.

#### **What are the main weaknesses of the existing Asylum Procedures Directive?**

Procedures for obtaining and withdrawing international protection currently differ between Member States, for instance as regards the time taken for examining a claim, procedural guarantees provided to applicants and the use of accelerated and inadmissibility examination procedures. The current procedures are generally too complex, too lengthy and applicants are not treated the same way in each Member State. These discrepancies between Member States' procedures contribute to differences in recognition rates, secondary movements, so called asylum shopping and ultimately, to an unfair distribution of responsibilities among Member States. The degree of harmonisation of national procedures for granting and withdrawing international protection that was achieved through the recast Asylum Procedures Directive, adopted in 2013, has proven to be insufficient to address these problems.

#### **Why is the Commission proposing to replace the Directive with a Regulation?**

The Commission is proposing the adoption of a Regulation which will establish a common Union asylum procedure for all applications for international protection, irrespective of which Member State the applications are examined in. The replacement of a legal instrument which requires transposition into national law with another instrument whose provisions are clear, precise and directly applicable is the best way to secure the full harmonisation of asylum procedures and create a common procedure

applicable to all Member States. A Regulation is directly applicable, which means that it can be directly relied upon by both the applicants for international protection and by the authorities. This is the most effective way for guaranteeing the rights of applicants and equity in the treatment of applications across all Member States.

### **What are the main objectives of the proposal?**

The new Asylum Procedures Regulation will:

- Establish a common procedure for international protection applicable in the same way in all Member States;
- Make the procedure faster, simpler and more effective;
- Provide the tools for national authorities to examine and decide upon applications efficiently, fight abuse and prevent secondary movements;
- Ensure common procedural guarantees for the individual applicants.

### **How will the new Regulation simplify and clarify the procedure for international protection?**

The proposal clarifies the various procedural steps and concepts, starting from access to the procedure to the final decision on an application for international protection - ensuring a common procedure for all Member States. The Regulation contains the specific timelines, tasks and responsibilities of the competent national authorities for every step of the procedure, and clearer obligations, rights and procedural safeguards for the applicants.

### **What are the steps for filing an asylum application?**

Access to the procedure is based on a three-step approach: making, registering and lodging an application.

**An application is considered to be made** as soon as the person expresses a wish to receive international protection from a Member State. From the moment an application is made the person becomes an applicant and benefits from the rights under the Asylum Procedure Regulation and the Reception Conditions Directive.

**The application needs to be registered** promptly and at the latest within three working days from when it is made. The authorities registering the application have a duty to inform the applicant of his/her rights and obligations as well as the consequences in case of non-compliance.

**Lodging is the final step** to access the procedure. Applicants must be given an effective opportunity to lodge their application within ten working days from when their application is registered. At this stage, applicants must submit all the elements at their disposal in order to substantiate and complete their applications. This is an important step since it triggers the timeline for the examination of the applications.

### **What would the duration be for processing an application?**

The overall duration of the administrative procedure remains at a maximum of six months from the lodging. This may be prolonged once by three months in exceptional cases of disproportionate pressure on the asylum system or due to the complexity of the case (the current Directive foresees the possibility to prolong the procedure by 9 months). The procedure may be temporarily suspended because of changes in the country of origin. In those cases, the procedure should not exceed 15 months.

### **Will time limits for the accelerated and admissibility examination procedure be introduced?**

The introduction of time limits is being proposed for the duration of the accelerated examination procedure (maximum two months) and for the admissibility procedure (maximum one month). In cases where an applicant comes from a first country of asylum or a safe third country, the admissibility of the claim must be examined within ten working days.

### **Will time limits for appeals be introduced?**

Yes, time limits are set for lodging appeals, as well as for the duration of the first appeal stage. The time limits for lodging an appeal range from one week to one month, depending on the type of procedure that led to the rejection of the application. For decisions at the first appeal stage, the time limit varies from two to six months, depending again on the type of procedure that led to the rejection of the application. This may be prolonged by three months in cases involving complex issues of fact or law.

No specific time limits are foreseen for subsequent appeals. However, the right to stay during such subsequent appeals will be exceptional, and a decision on it will have to be taken during a period of one month from the lodging of the further appeal.

### **Does the proposal foresee the possibility to extend these time limits?**

The time limits foreseen for the registering, lodging and processing of applications may be exceptionally extended in situations where a Member State receives a disproportionate number of simultaneous applications. This exception is provided for to support the Member States in cases of disproportionate pressure on the asylum system. However, to ensure an effective process, extending the time limits should be a measure of last resort.

### **Will the use of the accelerated procedure become compulsory in certain cases?**

Yes, under certain limited grounds which include cases where applicants makes clearly inconsistent or false representations, misleads the authorities with false information, or comes from a safe country of origin. Similarly, an application should be examined under the accelerated examination procedure where it is clearly abusive, such as when the applicant seeks to delay or frustrate the enforcement of a return decision, or when the applicant has absconded.

### **When can an application be declared inadmissible?**

If applicants have already found a first country of asylum where they enjoy protection, or where their applications can be examined by a safe third country, applications must be declared inadmissible. Subsequent applications without new relevant elements or findings, and separate unjustified applications by a spouse, partner, dependant adult or accompanied minor, are also to be declared inadmissible.

### **At which stage is the admissibility assessment done?**

The first Member State in which an application has been lodged should examine the admissibility on account of the first country of asylum or safe third country, before determining the Member State responsible in accordance with the new Dublin Regulation.

### **Is the processing of subsequent applications also being simplified?**

Yes. Subsequent applications are first subject to a preliminary examination to determine if the applicant brings forward relevant new elements or findings. If this is not the case, the subsequent application is to be dismissed as inadmissible or as manifestly unfounded. The personal interview may be dispensed with where, from the written submissions, it is clear that the application does not give rise to relevant new elements or findings, or that it is clearly without tangible prospects of success. Where subsequent applications are rejected, there will be no automatic right to remain on the territory of the Member State.

### **Why are obligations set out for applicants during the procedure?**

A common procedure cannot be effectively achieved if certain obligations are not fulfilled by applicants. The aim is to make the applicant take more responsibility throughout the procedure. This is also a way to combat abuse and to offer Member States the efficient tools to fight secondary movements. At the same time, this would avoid a situation where a limited number of Member States are examining the bulk of applications for international protection.

### **What are the main obligations for applicants under the new proposal?**

The main obligations are the following:

- The applicant must apply for international protection in the Member State of first entry or where he or she is legally present. This obligation derives from the proposed Dublin reform;
- The applicant must cooperate with the authorities; he/she must provide the necessary details to establish his/her identity and for the examination of the applications, as well as fingerprints and a facial image;
- The applicant must remain in the Member State examining the application, and he /she must respect reporting obligations according to the recast Reception Conditions Directive.

### **What happens if the applicant doesn't fulfil his or her obligations?**

Non-compliance with these obligations may lead to an application being rejected as abandoned under a procedure for implicit withdrawal. Where applicants abscond, their application will be examined under an accelerated examination procedure. Where an application is rejected as abandoned or rejected following an accelerated examination procedure, the applicant will no longer have an automatic right to remain on the territory of the Member State. In cases of subsequent applications, applicants do not enjoy the right of free legal assistance and they do not have a right to remain.

### **Will the border procedure change?**

The border procedure provides for the possibility to decide at the border or transit zones of A Member State on the admissibility of an applicant and the substance of an application. Access to the territory

should be granted in order the application to be processed if, within four weeks, no decision has been taken by the Member State.

The border procedure remains optional since this kind of procedure normally implies the use of detention. It can be applied for examining the admissibility or the merits of applications on the same grounds as under an accelerated examination procedure. A decision needs to be taken within four weeks, which is also the currently applicable time limit. If no decision is taken within those four weeks, the applicant gains the right to enter and remain on the territory.

### **Can the border procedure and the accelerated examination procedures be applied to unaccompanied minors?**

The application of these special procedures is limited with regard to unaccompanied minors. More generally, adequate support needs to be provided to vulnerable applicants for these procedures to apply to them.

### **How will the proposal reinforce the guarantees for every applicant?**

All applicants must be fully informed of their rights, obligations and of the consequences of not complying with their obligations. The proposal widens the scope for free legal assistance, which will also be available during the administrative procedure. Applicants will therefore, at their request and where necessary, receive free legal assistance and representation throughout all stages of the procedure.

The applicants have a right to be heard in a personal interview subject to a few exceptions. Applicants will be provided interpretation and may be assisted by a legal adviser during the personal interview. A personal interview is also provided for in the context of withdrawal of status.

Reinforced safeguards are provided for applicants with special procedural needs and unaccompanied minors.

### **How will the new rules reinforce the guarantees for unaccompanied minors?**

The best interest of the child is the primary consideration in all procedures applicable to unaccompanied minors in line with Article 24 of the EU Charter of Fundamental Rights. The proposal reinforces the guarantees that are available for vulnerable persons, and in particular for unaccompanied minors. The Commission has in particular foreseen several measures aimed at securing prompt and effective guardianship for these children. The responsible authorities have to appoint a guardian as soon as possible and no later than five working days from the moment an unaccompanied minor makes an application for asylum. The time limit for lodging for unaccompanied minors will only start from the moment the guardian is appointed and meets with the child.

### **Is the right to be heard respected in the new proposal?**

Yes. The applicants have the right to be heard through a personal interview on the admissibility or merits of their application, irrespective of the type of administrative procedure applied to their case. The personal interview may only be omitted in limited cases, when the determining authority is certain to take a positive decision on the application or it is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstance beyond his or her control or in the context of subsequent applications under certain conditions.

### **What about the right to remain on the territory of a Member State during the procedure?**

As a general rule, for an asylum applicant to be able to exercise his or her right to an effective remedy, he or she has the right to remain until the time limit for lodging a first level of appeal expires and where the applicant exercises such right, pending the outcome of the remedy.

Asylum applicants have the right to remain on the territory of the Member State for the duration of the administrative procedure. However, this does not constitute an entitlement to residence, and it does not give the applicant the right to travel to another Member State without authorisation. Exceptions from the right to remain during the administrative procedure are limited to certain cases of subsequent applications and cases of surrender or extradition to a Member State, third country or an international court.

### **What about the rules concerning safe countries?**

The Commission considers that the 'safe country' concepts constitute a critical aspect of a common approach. It is an essential tool to support the swift processing of applications. Therefore, the proposal clarifies these concepts, and makes their application mandatory, including in individual cases.

### **Is the Commission considering establishing a European list of safe countries?**

The Commission proposes to progressively move towards full harmonisation in this area. It proposes the full replacement of national safe country lists with European lists or designations in five years' time

from the entry into force of the Asylum Procedures Regulation.

In September 2015, following to the European Council conclusions of 25-26 June, the Commission proposed an EU common list of safe countries of origin to allow for swifter processing of individual asylum applications from candidates originating from countries considered to be safe across the EU, and for faster returns if the individual assessments of the applications confirm no right of asylum. The Commission proposed to add Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey to this list. Other countries can be added in future following a thorough assessment by the European Commission. The LIBE Committee of the European Parliament endorsed the Commission's proposal for an EU common list on 7 July.

A similar list of safe third countries is also to be established, in accordance with the criteria set out in the regulation, at a later stage following the legislative procedure.

### **How will the new EU Agency for Asylum support the Member States?**

With its new mandate, the Agency will be able to provide Member States with the necessary operational and technical assistance to help them to register and process applications within the appropriate time limit. The mandate of the Agency provides that, where no request for assistance is made by a Member State and where due to disproportionate pressure the asylum system in a Member State becomes ineffective to such an extent that it jeopardises the functioning of the Common European Asylum System, the Agency may, based on an implementing decision of the Commission, take measures in support of that Member State. Moreover, the Agency will assist the Commission in assessing the situation in third countries designated as safe country of origin or safe third countries at Union level.

### **Does the new proposal foresee the possibility for Member States to help each other in times of crisis?**

Yes, this is foreseen in the new proposal. The authorities of other Member States and international organisations may also assist in the registration and examination of applications.

## **2. A proposal for a new Qualification Regulation**

The [Qualification Directive](#) establishes common grounds for granting international protection and foresees a series of rights for its beneficiaries (residence permits, travel documents, access to employment and education, social welfare and healthcare).

### **What are the main weaknesses of the existing Qualifications Directive?**

Recognition rates still vary between Member States and the type of protection status granted also differs from one country to another (Geneva Convention refugee status versus subsidiary protection status). In addition, there is a considerable disparity in the duration of the residence permits, as well as in the access to specific rights, especially social assistance. The differences of recognition and level of rights provided by Member States can contribute to secondary movements and undue pull factors to certain Member States. Moreover, the absence of systematic reviews of the status for example when changes in countries of origin could have an impact on the need for protection makes the system of protection permanent, thereby providing for protection even if it is not needed anymore.

### **Why is the Commission proposing to replace the Directive with a Regulation?**

The Commission is proposing to replace the Qualification Directive with a Regulation to ensure maximum harmonisation of the standards for the qualification and content of protection for refugees and beneficiaries of subsidiary protection. Applicants for international protection must have the same chance of obtaining the same form of protection, or having their claim rejected, irrespective of where they apply for asylum in the Union.

### **How will the proposal harmonise the common criteria for recognising applicants for international protection?**

The new proposal includes prescriptive rules, replacing the current optional ones concerning the duty of the applicant to substantiate the application, the assessment of the internal protection alternatives and the grounds for withdrawal on the basis of being a danger to the security of the Member State or having been convicted for a particularly serious crime.

### **How can the reform ensure more convergence of asylum decisions across the EU?**

The new proposal obliges the Member States to take into account common analysis and guidance on the situation in the country of origin, provided at Union level by the European Union Agency for Asylum and the European Country of Origin Information networks in accordance with new provisions of the proposed Regulation, when deciding on an asylum application. Protection should only be granted to

those who need it and for as long as it continues to be needed.

### **Will the situation of each asylum seeker be reviewed regularly?**

Yes. The granting international protection has in practice almost invariably led to permanent settlement in the EU, while its purpose was to grant protection only for so long as the risk of persecution or serious harm persists. The new provisions therefore introduce the obligation for Member States to carry out systematic and regular status reviews in case of significant changes in the situation in the country of origin based on analysis and guidance provided by the EU Agency for Asylum as well as when they intend to renew the residence permits, for the first time for refugees and for the first and second time for beneficiaries of subsidiary protection.

Despite the existing obligation to withdraw the status when the risk of persecution or serious harm ceases, there are currently only few systematic status reviews by the Member States.

### **Will the regular reviews be an obstacle to integration?**

To avoid negative impacts on the prospects of integration which could result from an unsecure status, as well as unnecessary administrative burden, obligatory reviews (other than the ones triggered by a change in the country of origin) would only be required in the early stages after status has been granted (after three years for refugees and after years one and two for beneficiaries of subsidiary protection). If status is to be withdrawn, a 3-month grace period is proposed, to give the beneficiary the opportunity to apply for another legal migration status (for example for a Blue Card or on the basis of family reasons).

### **Can Member States limit the social assistance provided to beneficiaries?**

Member States may continue to limit the provision of social assistance to core benefits in respect of beneficiaries of subsidiary protection. In addition they can make access to certain types of social assistances conditional on effective participation in integration measures in line with the [Action Plan on Integration](#) presented by the Commission on 7 June.

### **How will the proposal address the issue of secondary movements?**

The harmonisation of recognition rates and type of protection status granted should contribute to a decrease in secondary movements.

Additionally, the 5-year waiting period for beneficiaries of international protection to become eligible for long term resident status will be restarted each time a person is found in a Member State where he/she does not have the right to stay or reside. This will provide a strong disincentive against secondary movements.

### **How does the proposal impact on the right to family reunification?**

Family reunification – the right for a family member to reunite with the refugee and to be admitted to an EU Member State for that purpose - is regulated by the [Family Reunification Directive](#). The proposed Qualification Regulation does not impact on the Family Reunification Directive.

The proposed Qualification Regulation contains rules for family members who are already on the territory of a Member State together with the refugee or the beneficiary of subsidiary protection, in order to provide for a residence permit to be able to stay with him/her. The definition of 'family members' has been adjusted to include families formed before the applicant arrived in the territory of the Member States (rather than restricting it to families formed in the country-of-origin, as was previously the case). This change is made to reflect the realities of migration today, where persons displaced from their country of origin often spend prolonged periods of time outside of their country of origin before arriving to the EU, for example in refugee camps in neighbouring countries.

## **3. A proposal to reform the Reception Conditions Directive.**

The [Reception Conditions Directive](#) establishes minimum common standards of living conditions for asylum applicants; ensures that applicants have access to housing, food, employment and health care.

### **What provisions are included in the Reception Conditions Directive?**

The Reception Conditions Directive provides for minimum harmonisation of standards for the reception of applicants for international protection in the EU. It defines what type of reception conditions Member States should provide to asylum seekers (for example housing, food, and schooling) and the way in which they can be provided. The Directive also defines the rights and obligations of asylum seekers regarding reception conditions (for example regarding applicants with special needs or in terms of access to the labour market and situations and conditions in which an applicant may be detained).

## **What are the objectives of the reform?**

The objective is to ensure that, throughout the Union, all asylum seekers fully benefit from the reception conditions set out in this Directive in the Member State in which they are supposed to stay. At the same time, enhancing self-sufficiency and discouraging secondary movements are other important objectives of the proposal.

## **Who will decide the standards on reception conditions?**

To support the convergence between the asylum systems of all Member States, Member States should take into account the standards and indicators on reception conditions developed by the European Asylum Support Office. Member States will also be requested to constantly update contingency plans to ensure sufficient and adequate reception capacity in case of disproportionate pressure.

## **Will applicants have easier access to labour market?**

Yes. Access to labour market must be given at the latest 6 months after an application is lodged. Member States are also encouraged to grant even earlier access, no later than three months from the lodging of an application, where the application is likely to be well-founded. Once granted access to the labour market, applicants shall be entitled to a common set of rights based on equal treatment with nationals of the Member State in question. On the other hand, access shall not be given to those applicants whose application is likely to be unfounded and treated in an accelerated procedure.

## **What else will change?**

Reinforced guarantees are provided for persons with special reception needs and unaccompanied minors, similarly to what it is provided in relation to the procedural-related needs (for example on assessment of special needs, on necessary staff training). The proposal will also require Member States to provide standardised information to all applicants, using a common template, on all reception-related benefits and obligations, including cases where material reception conditions may be restricted.

## **How will the reform prevent applicants from absconding?**

In line with the proposal for Dublin reform, the proposal clarified that reception conditions will be provided only in the Member State responsible for the applicants. The proposal also introduces prescriptive rules for deciding on the residence of an applicant, such as where this is necessary to effectively prevent the applicant from absconding. In those cases, the provision of material reception conditions shall also be subject to the actual residence of the applicant in that specific place. Member States should also require applicants to regularly report to authorities where necessary for preventing the applicants from absconding. New grounds for the detention of applicants have been added to ensure the fulfilment of the obligation to reside in a specific place where this is necessary to prevent the applicant from absconding.

## **Will detention be a measure that can be used by Member State?**

Applicants may already be detained where necessary under the current Reception Conditions Directive, on the basis of an individual assessment and as a measure of last resort. The proposal adds new grounds for detention and provides that Member States may detain an applicant who has not complied with the obligation to reside in a specific place and where there is a continued risk that the applicant may abscond.

## **How will the proposal prevent abuses?**

All the guarantees already provided for in the current Reception Conditions Directive regarding detention remain unchanged: for example detention is only justified when it proves necessary and on the basis of an individual assessment of each case and if other less coercive alternative measures cannot be applied effectively, and the length of the detention should be proportionate. Moreover, applicants will continue to enjoy specific legal and procedural guarantees such as the right to a swift judicial review of the lawfulness of detention.

## **Can the material entitlements be scaled down?**

Clearer rules have been laid down on when entitlement to material reception conditions can be scaled back and when financial allowances may be replaced with material reception conditions provided in kind.

## **Can the UK, Ireland, Denmark and the Schengen Associated States opt-in or out of these proposal?**

The UK and Ireland are not required to participate in the proposed measures, but will instead determine themselves the extent to which they want to participate, in accordance with the relevant Protocols attached to the Treaties.

Denmark is not taking part in the adoption of the proposals and is not bound by them or subject to

their application.

The Schengen Associated States (Iceland, Norway, Switzerland, Liechtenstein) do not take part in the adoption of the proposals and are not bound by the measures adopted.

**For more information**

[Press release](#): Completing the reform of the Common European Asylum System: Towards an efficient, fair and humane asylum policy

[FACTSHEET](#) - Asylum procedures: reforming the Common European Asylum System

[FACTSHEET](#) - Qualification: Reforming the Common European Asylum System

[FACTSHEET](#) - Reception Conditions: reforming the Common European Asylum System

[FACTSHEET](#) - The Common European Asylum System

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Press contacts:

[Natasha BERTAUD](#) (+32 2 296 74 56)

[Tove ERNST](#) (+32 2 298 67 64)

[Markus LAMMERT](#) (+ 32 2 298 04 23)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)