



Statewatch analysis

The Common European Asylum System: State-of-play

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Introduction

The EU has set itself the objective of agreeing on a second-phase of a Common European Asylum System (CEAS) by the end of 2012. At time of writing (13 November 2012) this date is now only seven weeks away. How likely is it that the EU will achieve its objective?

The second-phase of the CEAS will primarily be based on five legislative measures, which will each replace a legislative measure on the same subject adopted between 2000-2005, ie during the first phase of the CEAS.

The current state-of-play as regards these five legislative measures is as follows:

- 1) Qualification Directive: Directive 2011/95 replacing the first phase Directive concerning the qualification and content of international protection was adopted at the end of 2011 (OJ 2011 L 337/9). The deadline date to apply it is 22 December 2013.

See: <http://www.statewatch.org/analyses/no-141-qualifications-directive.pdf>

- 2) Directive on reception conditions for asylum-seekers: this will replace the first phase directive 2003/9; it was agreed in principle between the European Parliament (EP) and the Council in summer 2012, and is likely to be adopted officially in the near future.

See: <http://www.statewatch.org/analyses/no-184-reception-compromise.pdf>

- 3) Regulation on responsibility for asylum applications: this will replace the first phase Reg. 343/2003 (the 'Dublin II' Regulation); it was agreed in principle between the EP and the Council in summer 2012, except for the rules on implementing measures, but a deal on that issue appears to be imminent at time of writing. The legislation will therefore likely be adopted officially in the near future.

See: <http://www.statewatch.org/analyses/no-186-dublin.pdf>

- 4) Directive on international protection procedures: this will replace the first phase Directive 2005/85; the EP and the Council have been negotiating this text since

summer 2012, and a summary of the latest information on these negotiations is set out below.

See: <http://www.statewatch.org/analyses/no-178-asylum-procedures.pdf>

- 5) Regulation on Eurodac: this will replace the first-phase Reg. 2725/2000; the Council agreed on this text in October 2012, but the EP has not yet defined its position for negotiations.

See: <http://www.statewatch.org/news/2012/oct/eu-council-deal-eurodac-14847-12.pdf>

In addition, some connected legislation has already been adopted: 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).

Overall, it is not possible now for all of the legislation regarding the second phase of the CEAS to be *adopted* by the end of 2012. However, the majority (3/5) of the measures have been *agreed* already, and one of these measures has officially been adopted; the other two will likely be officially adopted by early 2013 at the latest. The remaining two measures *might* be agreed in principle by the end of 2012, depending on the last-minute progress of negotiations.

Asylum procedures directive

The following lists of all of the points outstanding between the EP and the Council according to the latest document available, assuming that the suggestions of a 'technical group' involved in the negotiations are accepted. The summary is 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) the concept of the 'status' of international protection;
- c) guarantees for applicants with special needs, including exceptions from some procedural rules (Art. 24);
- d) exceptions from some procedural rules for unaccompanied minors (Art. 25(6));
- e) the extended time period for deciding on applications (Art. 31(3)); the Council wants 12 months' extra, while the EP supports 6 months; the Council also wants to provide for the possibility of some asylum-seekers' applications being put on hold indefinitely; the EP wants a higher threshold to justify any extended time period;
- f) whether the list of possible accelerated procedures should be exhaustive or not (Art. 31(5));
- g) whether there must be time limits for accelerated procedures (Art. 31(7));
- h) ruling out certain grounds for accelerated procedures (Art. 31(7));
- i) the list of possible grounds for manifestly unfounded procedures (Art. 32(2));
- j) the existence of the concepts of 'safe country of origin', and so-called 'super-safe country of origin' (Arts. 36, 37 and 39);
- k) the rules on defining 'safe third countries' (Art. 38);
- l) the exceptions to the right to remain following a repeat application (Art. 41); and
- m) several issues relating to asylum-seekers' status during an appeal, including the right to stay on the territory (Arts. 45-46).

Easier issues:

- a) the definition of applicants with special procedural needs (Art. 2(d));
- b) the concept of the 'status' of international protection;
- c) whether certain decisions must be 'reasoned' (Art. 4(2)(b));
- d) several issues related to access to the procedure (Art. 6);
- e) information to applicants (Art. 8(1));
- f) use of information from other international human rights bodies (Art. 10(3)(b));
- g) lawyers' access to information (Art. 10(3)(c));
- h) applicants' cooperation obligations (Art. 13(1));
- i) searches of applicants (Art. 13(2)(d));
- j) lawyers' access to information (Art. 10(3)(c));
- k) notification re personal interviews (Art. 14);
- l) discriminatory requests re personal interviews (Art. 15(3)(b) and (c));
- m) mandatory recording (Art. 17);
- n) identification of victims of torture and violence (Art. 18(4));
- o) details of free information (Art. 19(1));
- p) legal aid on appeal (Art. 21(2)(c));
- q) other issues related to unaccompanied minors (Art. 27);
- r) issues related to implied withdrawal of applications (Art. 28);
- s) the frequency of Commission reviews of implementation (Art. 50); and
- t) 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)).

See: Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) [First reading] (15869-12, 305 pages) Multi-column document: Commission proposal, EP position, Council position, possible "compromises":

<http://www.statewatch.org/news/2012/nov/eu-council-asylum-proced-multi-col-15869-12.pdf>

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