



## ASYLUM POLICY

The aim of the EU's asylum policy is to offer appropriate status to any non-EU national requiring international protection in one of the Member States and ensure compliance with the principle of non-refoulement<sup>[1]</sup>. To this end, the EU is striving to develop a Common European Asylum System.

### LEGAL BASIS

- Articles 67(2), 78 and 80 of the Treaty on the Functioning of the European Union (TFEU);
- Article 18 of the EU Charter of Fundamental Rights.

### OBJECTIVES

The EU aims to develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to all non-EU nationals who need international protection, and to ensure that the principle of non-refoulement is observed. This policy must be consistent with the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Protocol thereto of 31 January 1967. Neither the TFEU nor the EU Charter of Fundamental Rights provides a definition of the terms 'asylum' or 'refugee', but both refer explicitly to the Geneva Convention and its Protocol.

### ACHIEVEMENTS

#### A. Advances under the Treaties of Amsterdam and Nice

Under the 1993 Treaty of Maastricht, previous intergovernmental cooperation on asylum was brought into the EU's institutional framework. As the main actor, the Council was to involve the Commission in its work and inform Parliament about its asylum initiatives; the Court of Justice of the European Union (CJEU) had no jurisdiction on asylum matters.

In 1999, the Treaty of Amsterdam granted the EU institutions new powers to draw up legislation in the area of asylum, using a specific institutional mechanism: a five-year transitional period with a shared right of initiative between the Commission and the Member States and decision by unanimity in the Council after consultation with

---

[1] A core principle of international refugee and human rights law that prohibits states from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation.



Parliament; the CJEU also gained jurisdiction in specific instances. The Treaty of Amsterdam also provided that, after this initial five-year phase, the Council could decide that the normal codecision procedure should apply and that it should henceforth adopt its decisions by qualified majority. The Council took a decision to that effect at the end of 2004 and the codecision procedure (now known as the ordinary legislative procedure) has applied since 2005.

With the adoption of the Tampere Programme in October 1999, the European Council decided that the Common European Asylum System should be implemented in two phases: the adoption of common minimum standards in the short term should lead to a common procedure and a uniform status for those who are granted asylum valid throughout the EU in the longer term.

This resulted in the ‘first phase’ of the Common European Asylum System (CEAS) from 1999-2004, establishing the criteria and mechanisms for determining the Member State responsible for examining asylum applications (replacing the international/intergovernmental 1990 Dublin Convention), including the European Asylum Dactyloscopy Database (Eurodac) for storing and comparing fingerprint data. It also defined common minimum standards to which Member States were to adhere in connection with the reception of asylum seekers, determined qualification criteria for international protection and the nature of the protection granted, and established procedures for granting and withdrawing refugee status. Further legislation covered temporary protection in the event of a mass influx.

In November 2004, the Hague Programme called for the second-phase instruments and measures to be adopted by the end of 2010, highlighting the EU’s ambition to go beyond minimum standards and develop a single asylum procedure comprising common guarantees and a uniform status for those granted protection. In the 2008 European Pact on Immigration and Asylum, this deadline was postponed to 2012.

## **B. The Treaty of Lisbon**

The Treaty of Lisbon, which entered into force in December 2009, changed the situation by transforming the measures on asylum from establishing minimum standards into creating a common system comprising a uniform status and uniform procedures.

This common system must include:

- A uniform status of asylum;
- A uniform status of subsidiary protection;
- A common system of temporary protection;
- Common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- Criteria and mechanisms for determining which Member State is responsible for considering an application;
- Standards concerning reception conditions;
- Partnership and cooperation with non-EU countries.



Since the Treaty of Lisbon was adopted, Article 80 of the TFEU has also explicitly provided for the principle of solidarity and fair sharing of responsibility, including any financial burdens, between Member States. EU actions concerning asylum should, if necessary, contain appropriate measures to ensure this principle is followed. The treaty also significantly altered the decision-making procedure on asylum matters, by making codecision the standard procedure. In addition, the arrangements for judicial oversight by the CJEU have been improved significantly. Preliminary rulings may now be sought by any court in a Member State, rather than just national courts of final instance, as was previously the case. This has enabled the CJEU to develop a larger body of case law in the field of asylum.

The Stockholm Programme, adopted by the European Council on 10 December 2009 for the 2010-2014 period, reaffirmed ‘the objective of establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection’. It emphasised, in particular, the need to promote effective solidarity with those Member States facing particular pressures, and the central role to be played by the new European Asylum Support Office (EASO, currently the European Union Agency for Asylum ([EUAA](#))).

Although the Commission had tabled its proposals for the second phase of the CEAS as early as 2008-2009, negotiations progressed slowly. Accordingly, the ‘second phase’ of the CEAS was adopted following the entry into force of the Treaty of Lisbon, with a change of emphasis from minimum standards to a common asylum procedure on the basis of a uniform protection status.

### **C. The main existing legal instruments and current reform efforts**

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 ([the Temporary Protection Directive](#)) was developed as a framework for managing an unexpected mass influx of displaced persons and providing them with immediate protection. The aims of this directive are to reduce disparities between the policies of the Member States on the reception and treatment of displaced persons in a situation of mass influx, and to promote solidarity between Member States. It was triggered for the first time by the Council in response to the unprecedented Russian invasion of Ukraine on 24 February 2022 to offer quick and effective assistance to people fleeing the war in Ukraine.

With the exception of the recast [Qualification Directive](#), which entered into force in January 2012, the other recast legislative acts only entered into force in July 2013 (the [Eurodac Regulation](#); the [Dublin III Regulation](#); the [Reception Conditions Directive](#); and the [Asylum Procedures Directive](#)), which meant that their delayed transposition in mid-July 2015 fell at the peak of the migration crisis. In June 2014, the European Council drew up the [strategic guidelines for legislative and operational planning](#) in the area of freedom, security and justice (see Article 68 of the TFEU) for the coming years, based on the March 2014 [Commission communication](#) and building on the progress achieved by the Stockholm Programme. These guidelines stress that the full transposition and effective implementation of the CEAS is an absolute priority.



In view of the migratory pressure since 2014, in May 2015 the Commission issued the [European Agenda on Migration \(4.2.3\)](#), which proposed several measures to address this pressure, including the hotspot approach – shared between EASO (currently the EUAA), the European Border and Coast Guard Agency (formerly Frontex) and the European Union Agency for Law Enforcement Cooperation (Europol) – which involves working on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants. The hotspot approach was also meant to contribute to the implementation of the emergency relocation mechanisms for a total of 160 000 people in need of international protection. The mechanisms were proposed by the Commission to assist Italy and Greece and adopted by the Council on [14 and 22 September 2015](#), after consultation with Parliament. The Council decision was later maintained in court in the CJEU [judgment](#) of 6 September 2017. Relocation is meant as a mechanism to implement in practice the principle of solidarity and fair sharing of responsibility set out in Article 80 of the TFEU. However, relocation rates have been [lower than expected](#) and relocations have been implemented slowly.

The European Agenda on Migration also sets out further steps towards a reform of the CEAS, which were presented in two packages of legislative proposals in May and July 2016 and were discussed between Parliament and the Council throughout the legislative term ending in May 2019. However, no legislative acts were adopted during the 2014-2019 term due to the files being blocked in the Council or other specific files being put on hold due to blockages on connected files.

On 23 September 2020, the Commission issued the [New Pact on Migration and Asylum](#) in an attempt to give a fresh start to the stalled CEAS reform. The pact aims to strike a new balance between responsibility and solidarity. The Commission proposes integrating the asylum procedure into overall migration management, linking it with pre-screening and return.

The first of the reform proposals to be approved was on the setting up of the European Union Agency for Asylum (EUAA), replacing EASO. The EUAA was set up via Regulation (EU) 2021/2303, which was [published](#) in the Official Journal on 30 December 2021.

In September 2022, Parliament and five rotating Council Presidencies signed a joint [roadmap](#) on the organisation, coordination, and implementation of the timeline for the negotiations between the co-legislators on the CEAS and the New European Pact on migration and asylum. They committed to work together to adopt the reform of the EU migration and asylum rules before the 2024 European Parliament elections.

A political agreement was reached at the end of 2022 on the [reform of the recast Reception Conditions Directive](#), on the proposal for an [EU resettlement framework](#) and on the proposal for a [Qualification Regulation](#).

Trilogues between Parliament, the Council and the Commission are ongoing on the following files: the [Eurodac Regulation](#), the [Asylum Procedure Regulation](#), the [Screening Regulation](#), the [Asylum and Migration Management Regulation](#), and the [Crisis and force majeure Regulation](#).



The Commission, in its [Recommendation on legal pathways to protection in the EU](#), recommended that Member States implement their unfulfilled resettlement pledges, and invited the Member States to introduce and make more use of other pathways for humanitarian admission such as family reunification and community or private sponsorship schemes, as well as complementary pathways linked to education and work.

#### **D. The external dimension**

Adopted in 2011 by the Commission, the [Global Approach to Migration and Mobility](#) is the overarching framework of the EU's external migration and asylum policy. It defines how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities. It is embedded in the EU's overall external action and includes development cooperation. Its main objectives are to better organise legal migration, to prevent and combat irregular migration, to maximise the development impact of migration and mobility, and to promote international protection.

The European Council and Türkiye reached an agreement in March 2016 aimed at reducing the flow of irregular migrants into Europe via Türkiye. According to the [EU-Turkey Statement](#), all new irregular migrants and asylum seekers arriving from Türkiye on the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Türkiye. Also, for each Syrian returned to Türkiye, another Syrian should be resettled in the EU, in exchange for further visa liberalisation for Turkish citizens and the payment of EUR 6 billion under the Facility for Refugees in Türkiye, until the end of 2018. According to the Commission's last [Progress report on the Implementation of the European Agenda on Migration](#) of 16 October 2019, the statement played a key role in ensuring that the challenge of migration in the eastern Mediterranean was addressed effectively. In October 2021, the European Council [called](#) on Türkiye to ensure the full and non-discriminatory implementation of the EU-Turkey Statement of 2016, including vis-à-vis the Republic of Cyprus. The EU-Türkiye high-level dialogue on migration took place on 23 November 2023.

One of the key initiatives presented in the New Pact on Migration and Asylum was the promotion of tailor-made and mutually beneficial partnerships with non-EU countries in the area of migration. In July 2023, the Commission [signed](#) a Memorandum of Understanding with Tunisia.

On a global level, in September 2016, the United Nations General Assembly unanimously adopted the [New York Declaration for Refugees and Migrants](#), a landmark political declaration aimed at improving how the international community responds to large-scale movements of refugees and migrants and to protracted refugee situations. As a result, two global compacts were adopted in 2018, for refugees and for other migrants. The New York Declaration sets out a Comprehensive Refugee Response Framework, setting out specific actions needed to ease pressure on host countries, enhance refugee self-reliance, expand access to third-country solutions and improve conditions in countries of origin to enable refugees to return in safety and dignity. Based on these four key objectives, on 17 December 2018, the United Nations General Assembly affirmed the [Global Compact on Refugees](#).





## E. Funding available for asylum policies

The main funding instrument in the EU budget in the area of asylum is the Asylum, Migration and Integration Fund ([AMIF](#)). AMIF's allocation during the previous long-term EU budget (2014-2020), which coincided with the migration crisis, was increased from EUR 3.31 billion to EUR 6.6 billion. For the current long-term EU budget for the 2021-2027 period, funding has been increased again under AMIF to EUR 9.9 billion, inter alia in order to manage migration, asylum and integration in an effective and humane way, including financial support to Member States for solidarity shown through resettlement and relocation. Other EU funding instruments such as the European Social Fund ([2.3.2](#)), the Fund for European Aid to the Most Deprived ([2.3.9](#)) and the European Regional Development Fund ([3.1.2](#)) also allocate funds, mostly to support the integration of refugees and migrants, although the share of funds allotted to them is not accounted for separately in the budget lines and thus is not clear.

Similarly, the initial 2014-2020 allocation to [EASO \(currently the EUAA\)](#) was increased from EUR 109 million to EUR 456 million. In order to be ready to provide full operational support for asylum procedures in the future, the new multiannual financial framework (MFF) provides for a budget of EUR 1.22 billion for the 2021-2027 period.

The Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI – Global Europe) was established by [Regulation \(EU\) 2021/947](#). It brings together most of the EU's external funding instruments that existed as separate instruments in the previous budget period (2014-2020). It amounts to EUR 79.5 billion and includes an indicative 10% spending target in relation to migration (a flexible incitative approach to migration).

## ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has always strongly advocated for a CEAS, in accordance with the EU's legal commitments. It has also called for the reduction of irregular migration and for the protection of vulnerable groups.

On 7 September 2022, Parliament and five rotating Council Presidencies [committed](#) to work together to adopt the reforms initiated in 2016 of the EU migration and asylum rules before the 2024 European Parliament elections.

Parliament can bring an action for annulment before the CJEU. This instrument was successfully used (see the [CJEU judgment of 6 May 2008](#)) to obtain the annulment of the provisions concerning the arrangements for adopting the common list of non-EU countries regarded as safe countries of origin and safe non-EU countries in Europe provided for in Council Directive 2005/85/EC.

Visit the European Parliament Homepage on: [EU response to the migrant challenge](#)

Georgiana Sandu  
10/2023

