

# Establishing a European Asylum Support Office

2009/0027(COD) - 19/05/2010 - Final act

**PURPOSE:** to establish a European Asylum Support Office.

**LEGISLATIVE ACT:** Regulation (EU) No 439/2010 of the European Parliament and of the Council establishing a European Asylum Support Office.

**CONTENT:** this Regulation hereby establishes a European Asylum Support Office (the Support Office) in order to help improve the implementation of the Common European Asylum System (the CEAS), to strengthen practical cooperation among Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems.

In order to best fulfil its mandate, the Support Office should be **independent** in technical matters and should enjoy legal, administrative and financial autonomy. To that end, the Support Office should be a body of the Union having **legal personality** and exercising the implementing powers conferred upon it by this Regulation.

The Support Office should work in close cooperation with Member States' asylum authorities, with the Commission as well as with the UN High Commissioner for Refugees (the UNHCR) and, where appropriate, with relevant international organisations in order to benefit from their expertise and support.

It should be noted that the Support Office should have **no direct or indirect powers** in relation to the taking of decisions by Member States' asylum authorities on individual **applications for international protection**.

**Tasks and mission of the Support Office:** the Office's terms of reference will focus on three major tasks:

**1) Supporting practical cooperation on asylum:** the Office shall organise, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in asylum matters between the Member States. More specifically, the Office shall be responsible for activities relating to information on countries of origin, in particular the analysis of information and the drafting of reports. **The analysis of information on countries of origin** shall not purport to give instructions to Member States about the grant or refusal of applications for international protection. It shall be simply an opinion presented under a common format and using a common methodology.

The Support Office shall also ensure the **following tasks:**

- **supporting relocation of beneficiaries of international protection within the Union:** for Member States which are faced with specific and disproportionate pressures on their asylum and reception systems, due in particular to their geographical or demographic situation, the Support Office shall promote, facilitate and coordinate exchanges of information and other activities related to relocation within the Union. Relocation within the Union shall be carried out only on an agreed basis between Member States and with consent of the beneficiary of international protection concerned and, where appropriate, in consultation with the UNHCR;
- **support for training:** in particular it shall establish and develop training available to members of all national administrations and courts and tribunals, and national services responsible for asylum matters in the Member States. Training shall be either general, specific or thematic;

- **support for the external dimensions of the CEAS:** the Support Office shall, in agreement with the Commission, coordinate the exchange of information and other action taken on issues arising from the implementation of instruments and mechanisms relating to the external dimension of the CEAS (such as resettlement or other technical aspects with a view to promoting and assisting capacity building in the third countries' own asylum and reception systems and implementing regional protection programmes).

**2) Supporting Member States under particular pressure:** the Support Office shall coordinate and support **common action** assisting asylum and reception systems of Member States subject to particular pressure which places exceptionally heavy and urgent demands on their reception facilities and asylum systems. Such pressure may be characterised by the sudden arrival of a large number of third-country nationals who may be in need of international protection and may arise from the geographical or demographical situation of the Member State. The Support Office should support the **development of solidarity within the Union** to promote a better relocation of beneficiaries of international protection between Member States, while ensuring that asylum and reception systems are not abused.

In this context, the Support Office shall analyse data on any sudden arrival of large numbers of third country nationals, which may cause particular pressure on asylum and reception systems and ensure the rapid exchange of relevant information amongst Member States and the Commission. The Support Office shall make use of existing early warning systems and mechanisms and, if necessary, set up an **early warning system for its own purposes**.

At the request of the Member States concerned, the Support Office shall coordinate actions to support Member States, in order to:

- facilitate an initial analysis of asylum applications under examination by the competent national authorities;
- ensure that appropriate reception facilities can be made available by the Member States subject to particular pressure, in particular emergency accommodation, transport and medical assistance;
- establish asylum support teams, the operating arrangements of which are set out below.

**3) Contribution to the implementation of the Common European Asylum System (CEAS):** in order to contribute to the implementation of the CEAS, the Support Office may create factual, legal and case-law databases on national, Union and international asylum instruments making use, inter alia, of existing arrangements. Without prejudice to the activities of the Support Office, no personal data shall be stored in such databases, unless such data has been obtained by the Support Office from documents that are publicly accessible.

The Support Office shall draw up an annual report on the situation of asylum in the Union, evaluate the results of activities carried out under this Regulation and make a comprehensive comparative analysis of them with the aim of improving the quality, consistency and effectiveness of the CEAS. The Support Office may adopt technical documents on the implementation of the asylum instruments of the Union, including guidelines and operating manuals. The documents shall not purport to give instructions to Member States about the grant or refusal of applications for international protection.

**Asylum support teams:** at the request of one or more Member States subject to particular pressure, the Support Office may request the deployment of an asylum support team. The requesting Member State or Member States shall provide, in particular a description of the situation, indicate the objectives of the request for deployment and specify the estimated deployment requirements. In response to such a request, the Support Office may coordinate the necessary technical and operational assistance to the requesting Member State or Member States and the deployment, for a limited time, of an asylum support team in the territory of that Member State or those Member States on the basis of an operating plan.

To ensure the deployment of a support team, Member States should contribute to the **Asylum Intervention Pool** via a national expert pool on the basis of defined profiles and propose experts corresponding to the required profiles.

As regards the **deployment**, the home Member State shall retain its autonomy as regards the selection of the number and the profiles of the experts (national pool) and the duration of their deployment. Member States shall make those experts available for deployment at the Support Office's request unless they are faced with a situation substantially affecting the discharge of national duties.

The Executive Director and the requesting Member State shall agree on an operating plan setting out in detail the conditions for deployment of the asylum support teams. The operating plan shall include a description of the situation, with the modus operandi and objectives of the deployment, including the operational objective.

In addition, the Regulation lays down measures concerning:

- **civil liability and criminal liability:** where members of an asylum support team are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State. As regards criminal liability, members of an asylum support team shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them;
- **designation of contact points:** each Member State shall designate a national contact point for communication with the Support Office on all matters pertaining to the asylum support teams. The Executive Director shall designate one or more Support Office experts to act as the Union contact point for coordination of deployments;
- **costs:** where Member States make their experts available for deployment to asylum support teams, the Support Office shall meet costs relating to travel; vaccinations; insurance cover; health care; experts' fees.

**Organisation of the Support Office:** the administrative and management structure of the Support Office shall comprise:

- a Management Board;
- an Executive Director,
- the staff of the Support Office.

The administrative and management structure of the Support Office may comprise an Executive Committee. Such a Committee shall consist of eight members appointed from among the members of the Management Board amongst whom one of the Commission members of the Management Board. At the request of the Executive Committee, UNHCR representatives or any other person whose opinion might be of interest may attend meetings of the Executive Committee without the right to vote.

The term of office of members of the Management Board shall be three years. That term shall be renewable. On the expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced. The Executive Director shall be appointed for a term of five years. Before appointment, the candidate selected by the Management Board shall be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by its or their members. After that statement, the European Parliament may adopt an opinion setting out its view relating to the selected candidate. The Executive Director should also present the annual report to the European Parliament.

**Consultative Forum:** the Support Office shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, European or international level and shall set up a Consultative Forum for this purpose. It shall constitute a mechanism for the exchange of information and pooling of knowledge and shall ensure there is a close dialogue between the Support Office and relevant stakeholders. The UNHCR shall be a member of the Consultative Forum ex officio.

**Budget:** the Support Office's revenue shall comprise:

- a contribution from the Union entered in the general budget of the European Union;
- any voluntary contribution from the Member States;
- charges for publications and any service provided by the Support Office;
- a contribution from the associate countries.

In line with the functioning of all the Union's agencies, the Office shall present its provisional accounts in the context of the annual discharge procedure. The Office's expenditure shall include staff remuneration, administrative and infrastructure expenses, operating costs. The Support Office shall apply applicable legislation as regards corruption and anti-fraud measures.

**Evaluation and review:** no later than 19 June 2014, the Support Office shall commission an independent external evaluation of its achievements and progress made. It shall, in particular, address the possible need to modify the mandate of the Support Office, including the financial implications of any such modification and shall also examine whether the management structure is appropriate for carrying out the Support Office's duties.

**Cooperation:** in addition to cooperation with the UNHCR, the Support Office should cooperate with the Frontex Agency, the Fundamental Rights Agency and other bodies of the European Union as well as international organisations in the framework of the working arrangements concluded with those bodies. It should also cooperate with Denmark and other third countries and associate countries such as Iceland, Liechtenstein, Norway and Switzerland.

**Headquarters agreement and operating conditions:** an agreement should be laid down on the rules applicable in this State to the Executive Director, members of the Management Board, Support Office staff. The host Member State shall provide the best possible conditions to ensure the proper functioning of the Support Office.

**Entry into force and start of the Support Office's activities:** the Regulation shall enter into force on 18 June 2010. The Support Office shall become fully operational by 19 June 2011. The Commission shall be responsible for the establishment and initial operation of the Support Office until it has the operational capacity to implement its own budget.