

Asylum Procedure Regulation

2016/0224A(COD) - 13/07/2016 - Legislative proposal

PURPOSE: to establish a common procedure granting and withdrawing international protection, which replaces the various procedures in the Member States, and which is applicable to all applications for international protection made in Member States.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Common European Asylum System is based on rules determining the Member State responsible for applicants for international protection, common standards for asylum procedures, reception conditions, the recognition and protection of beneficiaries of international protection.

Notwithstanding the significant progress that has been made in the development of the Common European Asylum System (CEAS), there are still notable differences between the Member States in the types of procedures used, the reception conditions provided to applicants, the recognition rates and the type of protection granted to beneficiaries of international protection. These divergences contribute to secondary movements and asylum shopping, create pull factors, and ultimately lead to an uneven distribution among the Member States of the responsibility to offer protection to those in need.

Recent large scale arrivals have shown that Europe needs an effective and efficient asylum system able to assure a fair and sustainable sharing of responsibility between Member States and to ensure the quality of the decisions made.

Against this backdrop, the Commission presented a first set of proposals to reform the Common European Asylum System delivering on three priorities identified in its Communication:

- [establishing a sustainable and fair Dublin system](#) for determining the Member State responsible for examining asylum applications,
- [reinforcing the Eurodac system](#) to better monitor secondary movements and facilitate the fight against irregular migration,
- establishing a genuine [European Union Agency for Asylum](#) to ensure the well-functioning of the European asylum system.

With the second package, the Commission is completing the reform of the Common European Asylum System by adopting four additional proposals:

1. this proposal replacing the Asylum Procedures Directive with a Regulation, harmonising the current disparate procedural arrangements in all Member States and creating a genuine common procedure;
2. a [proposal replacing the Qualification Directive with a Regulation](#), setting uniform standards for the recognition of persons in need of protection and the rights granted to beneficiaries of international protection;
3. a [proposal revising the Reception Conditions Directive](#);
4. [a structured Union resettlement framework](#), moving towards a more managed approach to international protection within the EU.

CONTENT: the aim of this proposal is to ensure fast and efficient treatment of applications for international protection by establishing a common procedure for granting and withdrawing international protection, which replaces the various procedures in the Member States, and which is applicable to all applications for international protection made in Member States.

By choosing the form of a Regulation, which is directly applicable in all Member States, and by removing elements of discretion as well as simplifying, streamlining and consolidating procedural arrangements, the proposal aims at achieving a higher degree of harmonisation and greater uniformity in the outcome of asylum procedures across all Member States, thereby removing incentives for asylum shopping and secondary movements between Member States.

The proposal promotes the objective of ensuring fast but high quality decision making at all stages of the procedure

Main aims of the proposal:

1. Simpler, clearer and shorter procedures which replace the current disparate procedural arrangements in the Member States.

- time-limits: this proposal provides for short but reasonable time-limits for an applicant to accede to the procedure and for concluding the examination of applications both at the administrative and the appeal stages. The six-month benchmark for a first decision is maintained, while significantly shorter time-limits are foreseen for dealing with manifestly unfounded and inadmissible claims.

Member States also have possibility to prioritise and examine quickly any application. Time-limits for registering, lodging and examining applications are set up but may be exceptionally extended when Member States receive a disproportionate number of simultaneous applications. To plan for such eventualities, Member States should rather regularly review and anticipate their needs to ensure that they have adequate resources in place to manage their asylum system efficiently. Where necessary, Member States may also rely on the assistance of the European Union Agency for Asylum. In addition, the use of the admissibility procedure and the accelerated examination procedure becomes mandatory and the provisions on subsequent applications are clarified allowing for exceptions from the right to remain at the end of or during the administrative procedure.

These procedures should be expedient and for this reason the time-limit proposed for an accelerated examination procedure is of two months whereas that for inadmissibility cases is of one month.

In cases where the ground for inadmissibility is the fact that an applicant comes from a first country of asylum or a safe-third country, the time-limit for the admissibility check is set at ten working days.

Border procedures, which normally imply the use of detention throughout the procedure, remain optional and can be applied for examining admissibility or the merits of applications on the same grounds as under an accelerated examination procedure. If no decision is taken within four weeks, the applicant gains the right to enter and remain on the territory.

- additional elements: following the lodging of their application, applicants shall be authorised to submit any additional elements relevant for its examination until a decision under the administrative procedure is taken on the application.

2. Procedural guarantees safeguarding the rights of the applicants to ensure that asylum claims are adequately assessed within the framework of a streamlined and shorter procedure.

This is ensured by informing all applicants, at the start of the procedure, of their rights, obligations and consequences of not complying with their obligations. The applicants need to be given an effective opportunity to cooperate and properly communicate with the responsible authorities so as to present all facts at their disposal to substantiate their claim. Applicants are required to cooperate with the responsible authorities for them to be able to establish their identity, including by providing their fingerprints and facial image. The applicant needs to inform the responsible authorities of his or place of residence and telephone number so that he or she can be reached for the purposes of the procedure.

- personal interview: the proposal contains important guarantees for the applicant to ensure that, subject to limited exceptions and at all stages of the procedure, an applicant enjoys the right to be heard through a personal interview, is assisted with the necessary interpretation and is provided with free legal assistance and representation. However, Member States may decide not to provide free legal assistance and representation when the applicant has sufficient resources and where the application or appeal are considered as having no tangible prospect of success;

- right to remain on the territory: within three working days from lodging an application, the applicant must be provided with a document certifying that the individual is an applicant, stating that he or she has a right to remain on the territory of the Member State and stating that it is not a valid travel document. The proposal sets out the type of information that should be included in that document and foresees the possibility of having a uniform format for those documents to be established by means of an implementing act so as to ensure that all applicants receive the same document across all Member States;

- right to an effective remedy: the applicants have the right to appropriate notification of a decision, the reasons for that decision in fact and in law and, in the case of a negative decision, they have the right to an effective remedy before a court or a tribunal;

- unaccompanied minors: the proposal upholds a high level of special procedural guarantees for vulnerable categories of applicants, and in particular for unaccompanied minors. To ensure a fair procedure for these applicants, it is necessary to identify their needs as early as possible in the procedure and to provide them with adequate support and guidance throughout all stages of the procedure.

As regards children in general, the best interests of the child as a primary consideration is the prevailing principle when applying the common procedure. All children, irrespective of their age and of whether they are accompanied or not, shall also have the right to a personal interview unless it is manifestly not in the child's best interests.

As regards unaccompanied minors, they should be assigned a guardian as soon as possible and not later than five working days from the moment an unaccompanied minor makes an application. The role of the guardian is to assist and represent an unaccompanied minor with a view to safeguarding the best interests of the child and his or her general well-being in the procedure for international protection. The proposal provides that a guardian should not be made responsible for a disproportionate number of minors

3. Stricter rules to prevent abuse of the system, sanction manifestly abusive claims and remove incentives for secondary movements by setting out clear obligations for applicants to cooperate with the authorities throughout the procedure and by attaching strict consequences to non-compliance with obligations.

In this respect, the examination of an application for international protection is made conditional upon lodging an application, fingerprinting, providing the necessary details for the examination of the application as well as presence and stay in the Member State responsible.

Failure to comply with any of these obligations may lead to an application being rejected as abandoned in accordance with the procedure for implicit withdrawal.

The current optional procedural instruments for sanctioning abusive behaviour of applicants, secondary movements and manifestly unfounded claims are made compulsory and further reinforced. In particular, the proposal provides for clear, exhaustive and compulsory lists of grounds where an examination must be accelerated and where applications must be rejected as manifestly unfounded or as abandoned. Moreover, the ability to respond to subsequent applications abusing the asylum procedure has been reinforced, in particular by enabling the removal of such applicants from Member States' territories before and after an administrative decision is taken on their applications.

At the same time, all guarantees are in place, including the right to an effective remedy, to ensure that the rights of applicants are always guaranteed.

4. Harmonised rules on safe countries: where applicants are manifestly not in need of international protection because they come from a safe country of origin, their applications must be quickly rejected and a swift return organised. Where 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. The Commission proposes to progressively move towards full harmonisation in this area, and to replace national safe country lists with European lists or designations at Union level within five years of entry into force of the Regulation ('sunset' clause).

The proposed EU common list of safe countries of origin includes Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.

Monitoring, evaluation and reporting arrangements: the Commission shall report on the application of this Regulation to the European Parliament and to the Council within two years from its entry into force and every five years after that.