

The Common European Asylum System

The first stage Acquis

The background of the slide is a solid blue color. In the lower half, there are several decorative elements consisting of concentric circles or ripples, rendered in a lighter shade of blue, creating a subtle pattern.

Objective of the EC Treaty
(Amsterdam 1999):

Creation of an area of
Freedom, Justice and Security

including a
Common European Asylum
System (CEAS)

Construction of the CEAS

- Based on the Geneva Convention – “nobody should be sent back to persecution”
- Goal: a common asylum procedure & a uniform status valid throughout the EU
- Two phases
 - The TAMPERE Programme (1999-2004)
 - The HAGUE Programme (2005-2010)

Elements of CEAS – First stage acquis

➤ Legal instruments

- Dublin Regulation
- Eurodac Regulation
- Four “minimum standards” Directives
 - Temporary Protection Directive
 - Reception Conditions Directive
 - Qualification Directive
 - Asylum procedures Directive

➤ Financial instruments

- European Refugee Fund

The Dublin system

- Dublin Convention of 1990 (into force in 9/97):

Flanking measure in an area of free movement

General principle: an asylum application is to be examined by a single MS

Aims:

- To avoid 'asylum in orbit'
- To avoid 'asylum shopping'

The Dublin system

- 12/2000: Eurodac Regulation

Aims at improving the effectiveness of the Dublin Convention with an identification system

- 2/2003: Dublin Regulation

Replaces the Dublin Convention

Dublin Regulation

« Establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national »

(EC/343/2003 of 18 February 2003)

+ implementing rules (EC/1560/2003 of 2 September 2003)

Dublin Regulation

➤ General principles:

- Any asylum application shall be examined by a single Member State, which shall be the one as indicated by the criteria laid down in the Regulation
- Each Member State may decide to examine an asylum application, even if not responsible under the criteria

Dublin Regulation

➤ Hierarchy of Criteria:

1) Family situation

- a) Unaccompanied minor: MS where a member of his/her family is legally present
- b) MS where a family member is refugee / has applied for asylum and not received a first decision on the substance

2) residence permit / visa

- a) MS which issued a valid residence permit / visa
- b) MS which issued a residence document which has expired less than 2 years previously / a visa which has expired less than 6 months previously

3) irregular entry / stay

- a) MS in which an asylum seeker entered irregularly, until 12 months later
- b) MS in which an asylum seeker has been previously living for a continuous period of at least 5 months

Dublin Regulation

- Where no Member State can be designated on the basis of those criteria, the first Member State with which the application for asylum was lodged, is responsible for examining it

Dublin Regulation

➤ Procedures:

- Request for taking back: when an asylum application has been previously lodged in another MS
- Request for taking charge: on the basis of the criteria
- Transfer of the asylum applicant

Specific rules concerning deadlines, evidence

Dublin Regulation

➤ Administrative cooperation:

- Each MS can request from another MS such personal data concerning an asylum seeker as is appropriate, relevant and non-excessive for
 - determining the MS responsible for examining an asylum application
 - Examining an asylum application

Dublin Regulation

- Each MS communicates to the Commission the list of the authorities responsible for fulfilling the obligations under the regulation
- MS may establish bilateral administrative arrangements, in order to facilitate and increase the effectiveness of the regulation

Dublin Regulation

➤ DubliNet:

Secure transmission channel for requests
(take charge, take back, information)

Eurodac Regulation

- Creates “EURODAC”, an instrument to facilitate the effective application of ‘Dublin’
- Member States
 - Have to take the fingerprints of all persons (at least 14 years)
 - applying for asylum
 - apprehended in an irregular crossing of an external border
 - Can take the fingerprints of persons (at least 14 years)
 - illegally present within a MS to check whether he/she lodged an asylum application in another MS

Eurodac Regulation

- Member States then send those data promptly to the Eurodac central unit

- Eurodac central unit
 - processes the fingerprint data
 - Quality check
 - searches and stores
 - Asylum seekers: searches against all existing stored data; stores for 10 years
 - Irregular entrants: stores for 2 years
 - Persons apprehended when illegally present: searches against fingerprints of asylum seekers; no storage
 - returns the result
 - No hit / hit result + all matches

Eurodac Regulation

- Member States can take action with the result:
Take charge or take back request
- Member States shall delete data of an asylum seeker stored in the central data base as soon as they become aware that he/she has acquired citizenship of any Member State
- Member States shall delete data of an alien stored in the central data base as soon as they become aware that he/she has acquired citizenship of any Member State, has been issued a residence permit, or has left the EU territory.
- Member States shall block data of an asylum applicant as soon as he is recognised as a refugee

Eurodac Regulation

➤ Data protection:

- Specific rules
- Directive 95/46/EC (data protection directive)

The “minimum standards” Directives

- Temporary Protection Directive
- Reception Conditions Directive
- Qualification Directive
- Asylum procedures Directive

Minimum standards

- To guarantee high level of protection to those genuinely in need while preventing abuses
- To limit secondary movements caused by differences in national legal systems
- To lead to a common procedure and a uniform status
- N.B. Member States can still adopt more favourable standards, in so far as they are compatible with the Directives

Temporary protection Directive

Temporary protection

Objective (Article 1)

- To establish minimum standards for giving temporary protection in the event of mass influx of displaced persons from third countries unable to return *and*
- To promote a balance of effort between Member States in receiving and bearing consequences thereof
 - Definitions of Article 2

Temporary protection

Circumstances of application

- Decision of the Council – Starting point (Article 5)
 - Procedure for adoption
 - Elements of the decision
 - Effect for *all* Member States
 - Possibility of exclusion by MS (Article 28)
 - Right to mount a legal challenge
- Duration of the temporary protection (Articles 4, 6)
 - possible time extension
- Possible extension by particular MS (Article 7)
 - Consequences

Temporary protection

Obligation of MS towards persons enjoying temporary protection (Chapter III)

- Resident permits and visas if necessary
- Information document
- Registration
- Readmission from another MS
- Grant of certain socio-economical rights
- Family reunification:
 - Conditions for exercising
 - Family members and their rights
 - Family members who are already in other MS vs. Family members who are not in any MS

Temporary protection

Obligation of MS towards persons enjoying temporary protection cont. (Chapters IV, V)

- Right to apply for asylum
 - Procedural arrangements
- Voluntary return
 - After and during temporary protection
 - Readmission by host MS

Temporary protection

Community dimension and Cooperation between MS (Chapters VI, VII)

- Support of ERF
- MS' Capacity of acquisition
 - Procedure in case of exceed
- Transfers of persons between MS
- National contact points network
 - Type of exchanged information

Reception conditions Directive

Reception conditions Directive

Objective and Scope (Articles 1-3)

- Lay down minimum standards for the reception of asylum seekers
- Application to all third country nationals or stateless persons applying for asylum
 - Not for application for other form of protection
- Definitions (in particular):
 - Application for asylum
 - Asylum seeker
 - Reception conditions
- No overlap with Temporary Protection Directive

Reception conditions Directive

Rights to be granted (Articles 5-12)

- Information
 - Time and content
- Documentation
 - Form and content
- Freedom of movement
 - Reasons for exceptions
- Family unity
- Education
 - Age condition
- Employment
 - Conditions of exercise (Time and limitations)

Reception conditions Directive

Rights to be granted cont. (Articles 13-15)

➤ Material reception conditions

- Adequate standard of living
- Conditions for grant
- Modalities

➤ Health care

- Minimum health care

Reception conditions Directive

Groups of special needs (Chapter IV)

- General principle “to take into account specific situation”
- List of people in special needs
 - Open list
- Particular emphasis
 - Minors
 - Unaccompanied minors
 - Torture and violence victims

Reception conditions Directive

Procedural guarantees

- Access of UNHCR, legal counsellors, NGO's to accommodation centres (Article 14(7))
- Guarantee of appeal (Article 21)
 - Judicial body in the last instance
 - Legal assistance

Reception conditions Directive

Withdrawal or reduction of reception conditions (Chapter III)

- Conditions to apply reduction or withdrawal
- Requirements for the form of decision

Reception conditions Directive

Further obligations for MS

- Statistics information (Article 22)
- Guidance monitoring and control system (Article 23)
- Staff (Articles 18(2), 19(4), 24)

Qualification Directive

➤ Minimum standards

- for the qualification and status of third country nationals or stateless persons
 - as refugees
 - or
 - as persons who otherwise need international protection
- for the content of the protection granted

➤ Adopted in April 2004

➤ Deadline for transposition: October 2006

Objectives

- To establish common criteria for the identification of persons in need of international protection
- To ensure minimum level of rights and benefits available to these persons in all Member States

Concept of International Protection

- Two distinct but complementary statuses:
 - Refugee status: based on Geneva Convention
 - Subsidiary protection status: based on international obligations under human rights instruments, such as the European Convention on Human Rights

Refugee Definition

- Third country national
- who is unwilling or unable to avail himself of the protection of his country of nationality
- because of a well-founded fear of persecution for reasons of
 - race
 - religion
 - nationality
 - membership of a particular social group
 - political opinion

Eligible for Subsidiary Protection

- Third country national
- who does not qualify as a refugee according to the Geneva Convention
- but is unwilling or unable to avail himself of the protection of his country of nationality
- because he/she would face a real risk of serious harm (death penalty, torture or inhuman treatment, serious threat in situations of armed conflict)

Minimum rights and benefits

- Similar for both categories - include:
 - residence permit and travel documents
 - access to education and employment,
 - access to accommodation,
 - access to welfare and healthcare
 - family reunification
 - access to integration facilities

- Rights attached to subsidiary protection may be subject to certain limitations

Other harmonization elements

- Definitions of concepts such as
 - “actors of persecution”,
 - “reasons for persecution” ...

- Cases where a person
 - has ceased to be a refugee
 - should have his protection status withdrawn
 - should be excluded from being a refugee

Asylum Procedures Directive

- Aims to guarantee fair and efficient procedures for granting and withdrawing refugee status
- Adopted on 1 December 2005
- Deadline for transposition: 1 December 2007

Scope

- All applications for asylum under the Geneva Convention, including at border and transit zones
- It may also apply in case of explicit request for other kinds of protection

Minimum standards

- Requirements for the decision-making process
- Procedural guarantees for applicants
- Common standards for the application of certain concepts and practices

Requirements for the decision-making process

Decisions must be made

- individually, objectively and impartially
- by a competent authority, whose personnel is specialized and trained in asylum matters
- on the basis of precise and up to date Country of Origin Information
- must be motivated and given in writing

Procedural guarantees for applicants

- Effective access to procedure and right to remain
- Information on rights and obligations and on procedure
- Opportunity to be interviewed
- Interpretation services
- Access to (free) legal assistance
- Access to UNHCR, also while in detention or in transit zones
- Specific guarantees for unaccompanied minors

Right to effective remedy

- Effective remedy means
 - An appeal before a courtor
 - a review by an administrative body followed by an appeal before a court
- Entails an examination of both facts and points of law
- (The possibility to request) suspensive effect should be dealt with in accordance with international obligations

Further guarantees

- No rejection possible solely because of failure to apply as soon as possible
- No detention possible for the sole reason that the person is an applicant for asylum
- In case of detention, Member States must ensure the possibility of speedy judicial review

Derogations from basic guarantees

- Certain derogations from the basic guarantees are allowed in specific procedures, such as:
 - Border procedures
 - Procedures on subsequent applications
- A derogation from the obligation to examine in substance is allowed in:
 - Procedures on inadmissible applications

Accelerated procedures

- Member States may accelerate procedures in cases where the application is, for instance:
 - likely to be well-founded or the applicant has special needs
 - clearly unfounded
 - fraudulent or abusive

European Refugee Fund

- Solidarity - Financial assistance to the efforts made by Member States
 - to provide adequate reception conditions and asylum procedures
 - to promote the integration
 - to help with the voluntary return

of asylum seekers, refugees and displaced persons.

Implementation

- Responsibility of the competent national authority for
 - requesting co-financing of the national programme
 - the selection of projects
 - the financial management and administration of actions co-financed by the Fund

- In accordance with criteria set in Decision 2002/307