

# Common procedure for asylum

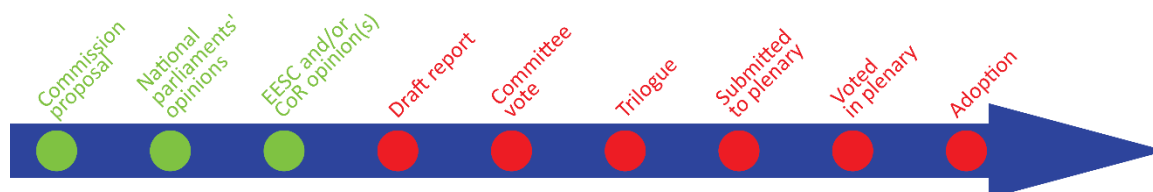
## OVERVIEW

As part of the common European asylum system (CEAS), the Asylum Procedures Directive sets out procedures for Member States for granting and withdrawing international protection in accordance with the Qualification Directive. Following the large influx of asylum-seekers to the European Union after 2014, the directive came under criticism for being too complex and for leaving Member States too broad discretion, leading to differences in treatment and outcomes.

On 13 July 2016, as part of the reform of the CEAS, the Commission published a proposal to replace the current directive with a regulation establishing a common procedure for international protection applicable in all participating Member States. The choice of a directly applicable regulation is expected to bring about harmonisation of the procedures, ensuring same steps, timeframes and safeguards across the EU.

The 2016 proposal having reached deadlock, the Commission proposed an amended regulation on 23 September 2020 under its new pact on asylum and migration, suggesting targeted amendments to help overcome certain contentious issues relating in particular to the border procedure and return. The amended proposal is currently being examined by the co-legislators with a view to fixing their positions in order to resume trilogue negotiations shortly.

<b>Amended proposal for a regulation of the European Parliament and the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU</b>		
<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2020) 611 23.9.2020
<i>Rapporteur:</i>	Fabienne Keller (Renew Europe, France)	COM(2016) 467 13.7.2016
<i>Shadow rapporteurs:</i>	Lena Düpont (EPP, Germany) Sylvie Guillaume (S&D, France) Nicolaus Fest (ID, Germany) Erik Marquardt (Greens/EFA, Germany) Assita Kanko (ECR, Belgium) Sira Rego (The Left, Spain)	2016/0224(COD)  Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Publication of draft report	



## Introduction

In the EU, the common European asylum system ([CEAS](#)) establishes common standards for Member States in their procedures for granting and withdrawing international protection (both refugee and subsidiary protection status). Two of its elements, the [Qualification Directive](#) and the [Asylum Procedures Directive](#) set out an EU framework for national authorities assessing applications for asylum, i.e. protection given by a State on its territory to a person who is unable to seek protection in their own country for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

While adhering to the same set of standards, national asylum legislation across EU Member States differs in the types of procedures used, the recognition rates for asylum applications and the protection status granted. The Commission, taking note of these divergences and addressing [shortcomings](#) amplified by increased [migratory flows](#) after 2014, announced a reform of the CEAS under its [European agenda on migration](#). On 13 July 2016, the Commission [proposed](#) to replace the current Asylum Procedures Directive with a regulation that would establish a common procedure for international protection in all participating Member States.

On 25 April 2018, the LIBE committee adopted its report on the proposal for an asylum procedure regulation and voted to enter into interinstitutional negotiations. This decision was confirmed by plenary on 30 May 2018. The Council, however, did not manage to find a consensus among Member States on certain issues and the trilogue negotiations stalled.

After the 2019 European elections, in its 2020 work programme, the European Commission announced a new [pact on asylum and migration](#), which was presented on 23 September 2020. As part of the legislative package, the Commission presented a revised proposal for the common procedure regulation. While retaining the overall objectives of the 2016 proposal, the Commission made targeted changes to help overcome the impasse.

## Existing situation

The [Asylum Procedures Directive 2013/32/EU](#), which was recast and has been applicable since July 2015, was aimed at harmonising standards for granting and withdrawing international protection by national authorities, in accordance with the Qualification Directive. However, the current situation is far from harmonised and has been [criticised](#) for being too complex and leaving Member States too much discretion to ensure that similar cases are treated alike.

## Divergent recognition rates

One of the aspects of the functioning of the CEAS that has come under most criticism is the fact that by virtue of differences in the treatment of asylum applicants and their claims, the system incentivises asylum-seekers to travel onward to Member States where their applications might have a higher chance of success. This results in secondary movements within the [Schengen area](#), multiple applications in different Member States, and uneven distribution of applications in the EU, ultimately rendering the Dublin system unworkable.

The [2020 annual report](#) of the European Asylum Support Office (EASO) points out that, in general, recognition rates and the types of protection granted continue to vary significantly depending on the nationality of applicants. In 2019, the recognition rates among EU Member States, Norway and Switzerland (often referred to as 'EU+' countries) ranged from 10 % in Czechia to 88 % in Switzerland. EASO notes that this tendency has persisted over the years, with the outcome of the application depending heavily on the country where the application is lodged. For instance, recognition rates for Afghan nationals varied from 32 % in Belgium to 97 % in Switzerland, and for Turkish nationals from over 90 % in the Netherlands, Norway and Switzerland to only 51 % in Germany and 26 % in

France. However, not all nationalities are subject to such wide variation in recognition rates; Albanian and Syrian applicants, for example, had fairly similar recognition rates in all EU+ countries.

This is often explained by the absence of an EU-wide asylum status. The potential for a uniform status for asylum or subsidiary protection was provided after the entry into force of the Lisbon Treaty in 2009 (Article 78(2)(a) and (b) of the Treaty on the Functioning of the European Union, TFEU), but ultimately was not established in the recast CEAS completed in 2013.

Member States do not necessarily take fundamentally different approaches to recognising needs for international protection however. According to EASO, differences may also be linked to the fact that asylum-seeker profiles differ from one Member State to another. In 2019, first instance decisions on Afghan, Syrian and Venezuelan applicants accounted for a quarter of all decisions taken in EU+ countries but were not distributed evenly across destination countries. For example, Venezuelans and nationals of other Latin American countries applied for asylum predominantly in Spain, while Palestinians did so mainly in Greece and Spain, and Moldovans mainly in France.

## Fragmentation of examination procedures

Another aspect leading to different recognition rates derives from divergent uses of special procedures based on the previous and current locations of applicants and from varying presumptions regarding their protection needs. The Asylum Procedures Directive allows for the following [categories of applicants](#) for international protection, which entail different procedures and timeframes:

- **Regular asylum procedure (Article 31(1))**
  - examination of protection needs;
- **Prioritised procedure (Article 31(7))**
  - examination of protection needs of vulnerable or manifestly well-founded cases;
- **Accelerated procedure (Article 31(8))**
  - examination of protection needs of ostensibly unfounded or security-related cases;
- **Admissibility procedure (Articles 33-34)**
  - examination of admissibility (but not protection needs) of asylum-seekers who may be the responsibility of another country or have lodged repetitive claims;
- **Dublin procedure (Dublin Regulation (EU) No 604/2013)**
  - examination of claims (but not protection needs nor admissibility) of asylum-seekers who may fall under the responsibility of another EU Member State;
- **Border procedure (Article 43)**
  - accelerated examination of admissibility or merits at borders or in transit zones.

This complex procedural framework and the use of presumptions allow Member States to examine certain applications faster and, in some cases, to attribute the responsibility for asylum applicants to other (non-European) countries. For example, pursuant to Article 33 of the directive, 'Member States are not required to examine whether the applicant qualifies for international protection', where an application is presumed inadmissible because the applicant comes from a 'safe third country' or a 'first country of asylum'. The non-mandatory nature of these provisions increases the fragmentation of asylum policies in the EU and contributes to diverging outcomes.

The directive also permits use of an accelerated procedure if the applicant comes from a safe country of origin. Its Article 36 sets out the criteria but leaves Member States [discretion](#) to 'lay down in national legislation further rules and modalities' on its application. Thus, national [safe country of origin lists](#) are heterogeneous and some Member States [do not apply](#) the concept at all. The uneven

use of admissibility and accelerated procedures inevitably leads to different recognition rates for similar asylum applications, and encourage asylum-seekers to apply for asylum in host countries with more favourable outcomes. Stakeholders have [expressed regret](#) that this kind of nationality-based examination is an approach based more on prevention of migration than protection.

### Safe country concepts

First country of asylum – Country in which an applicant has received refugee status and can avail him or herself of that protection, or otherwise enjoys sufficient protection from *refoulement*

Safe third country – Country through which an applicant transits, which is considered capable of offering him or her adequate protection against persecution or serious harm

Safe country of origin – Country whose nationals may be presumed not to be in need of international protection

Source: Asylum information database (AIDA) [report](#) on admissibility, responsibility and safety in European asylum procedures, August 2016.

## Length of procedures

Under Article 31(3) of the directive, the maximum time limit for processing asylum applications under the regular procedure is six months from 'lodging of the application'. This evokes the specific steps in the [current asylum procedure](#), differentiating between making an application (expressing the wish) and formally lodging an application. An asylum information database (AIDA) [study](#) indicates that while, according to the directive, all claims must be registered within three working days and lodged as soon as possible, in practice asylum-seekers often have to wait much longer to be able to formally lodge an application. Moreover, some countries have set timeframes significantly shorter than six months for the regular procedure, although in practice these are often only indicative. This heterogeneity increases as regards special – i.e. admissibility – or accelerated procedures. Indeed, Article 43(2) of the Asylum Procedure Directive only stipulates that in a border procedure, a decision should be taken 'within a reasonable timeframe'. In its 2016 proposal, the Commission observes that national time limits to process such claims vary between a few days to five months. It must also be borne in mind that applicants in the border procedure are in practice likely to be detained as permitted by the [Reception Conditions Directive](#) (Article 8(3)(c)).

## Detention

Article 26 of the [Asylum Procedures Directive](#) stipulates that a person should not be held in detention for the sole reason that he or she is an applicant for international protection, and if detained, this person should have access to a speedy judicial review. This is in line with Article 8 of the Reception Conditions Directive, which lists the cases when applicants may be detained (i.e. to verify identity or nationality, if there is a risk of absconding, or for protection of national security and public order) but only if 'other less coercive alternative measures cannot be applied effectively'. Member States can also detain applicants who are subject to a return decision under the [Return Directive](#) or before a responsible Member State is determined under the [Dublin Regulation](#). Grounds for detention are left to be set in national law.

In practice, while the 2013 reform of EU asylum *acquis* brought about a certain level of harmonisation, a 2017 [policy paper](#) by the Jacques Delors Institute observes that detention is 'not the rule but still entrenched in state practice'. The report signals a few countries that continue to use detention in a questionable way for the purposes of transfer or return, such as Austria, where applicants are detained for identification up to 48 hours, and Hungary, Bulgaria and Greece, where applicants are in general detained for more than three months. Upon entry into their territory, at the border or airport transit zones, 11 Member States are reported to detain considerable numbers of applicants: Belgium, Bulgaria, Greece, Spain, Estonia, Luxembourg, Hungary, Malta, the Netherlands, Slovenia and Finland based on an AIDA estimation.

## Parliament's starting position

The European Parliament took a stand on the asylum procedures in its [resolution](#) of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, underlining that common rules for asylum procedures are already included in the CEAS but have not been fully implemented by the Member States. Parliament stressed that implementation is a key condition for achieving harmonisation and solidarity among Member States, which can, if needed, seek support from EASO. With regard to solidarity, Parliament noted that 'harmonisation of reception conditions and asylum procedures can avoid stress on countries offering better conditions and are key to responsibility sharing'.

Parliament observed that the current mechanisms have not managed to ensure a 'swift access to protection' and referred to inadmissible applications, subsequent applications, accelerated procedures, and border procedures as examples where the current Asylum Procedures Directive 'tried to strike a delicate balance between the efficiency of the system and the rights of the applicants'. Parliament acknowledged that the Commission's proposal for an EU list of safe countries of origin aimed to replace diverging national lists with one common list to ensure uniform application of the concept. Parliament warned, nevertheless, that any such list should not affect every applicant's right for an individual examination of his or her claim for international protection. Parliament recalled that under Article 3 of the [Geneva Convention](#), Member States have an obligation not to discriminate against refugees on the basis of their race, religion or country of origin. Regarding detention, Parliament insisted that any form of detention required judicial control and called on Member States to 'correctly apply the Asylum Procedures and the Reception Conditions Directives in relation to access to detention centres' when alternatives to detention have been exhausted.

The LIBE committee adopted its [report](#) on the 2016 Commission proposal on 25 April 2018 (rapporteur Laura Ferrara, then EFDD, Italy), calling for asylum procedures to be accelerated so that asylum requests would be registered within three days and admissibility assessed in one month. Overall, the regular procedure should not exceed six months (nine in exceptional circumstances). The report agreed that accelerated procedures should be made mandatory in certain cases but not to the extent proposed by the Commission and not for unaccompanied minors, who should also be excluded from border procedures. The report insisted on procedural safeguards, such as the right to a personal interview, free legal assistance and appeal, and the need to assign a guardian to unaccompanied minors within 24 hours of making an application for protection. The report accepted the list of safe countries of origin presented in the annex to the proposal (namely Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia), with the exception of Turkey, which was removed from the list.

In the lead up of the publication of the present, revised proposal, the European Parliament's LIBE committee started drawing up an implementation report specifically on Article 43 of the Asylum Procedures Directive, appointing Erik Marquardt (Greens/EFA, Germany) as rapporteur. The accompanying [European implementation assessment](#) prepared by EPRS was published in November 2020.

On 12 January 2021, the LIBE committee adopted an [own-initiative report](#) on the application of the 2013 Asylum Procedures Directive, with a special attention to border procedures (Article 43). The rapporteur was Erik Marquardt (Greens/EFA, Germany). The Committee members agreed that the procedure lacked a clear definition and objective, and as a result was not applied in a uniform manner. They expressed concern for potential fundamental rights violations at the external borders, including refusals of entry and denied access to asylum. The report deplored the living conditions in transit zones and detention centres, and noted that detention of asylum-seekers should be used as a last resort only. The report also denounced the application of border procedures to unaccompanied minors. At the plenary session of the European Parliament on 8 February 2021, the rapporteur Erik Marquardt gave a [short presentation](#) on the implementation of Article 43 of the



Asylum Procedures Directive, highlighting the need for scrutiny based on evidence and facts as well as an independent monitoring mechanism. He referred to increasing reports of human rights violations in border areas and concluded that Member States did not have an obligation to use border procedures but if they decided to do so, all necessary safeguards should be ensured. Parliament adopted its [resolution](#) on 10 February 2021 with 505 votes in favour, 124 against and 55 abstentions.

Work on the amended proposal is now continuing in the LIBE committee on the basis of the position reached in 2018, with Fabienne Keller (Renew Europe, France) taking over [rapporteurship of the file](#).

## Council and European Council starting position

The European Council of [18-19 February 2016](#) addressed the migratory challenge by calling for a reform of the CEAS to 'ensure a humane and efficient asylum policy'.

A month later, the European Council of [17-18 March 2016](#) took note of the Commission communication 'Next operational steps in EU-Turkey cooperation in the field of migration', in particular as regards the concepts of 'first country of asylum' and 'safe third country' and how these could be applied in the context of the [EU-Turkey statement](#) of 18 March 2016.

In Council, despite [general support](#) for the 2016 proposal, Member States voiced substantive reservations regarding applicants with special needs, certain provisions aiming at limiting secondary movements and the safe third country concept. The biggest outstanding issues for most Member States were nevertheless the definition of the term 'final decision' (article 4 of the proposal) regarding granting refugee status or subsidiary protection status and article 41 regarding the border procedure. In contrast with the European Parliament, Council was inclined towards extending the use of accelerated procedure, including for unaccompanied minors. Council was divided when it came to making the border procedure compulsory, at least in certain situations such as a large influx of asylum-seekers from countries with a low recognition rate. Nor did Council reach a position on the proposed European list of safe countries or whether the new regulation should include such a list. As a general approach [could not be reached](#) in Council, the Commission included in its amended proposal provisions to overcome this impasse. Work is expected to continue on the recast proposal with a view to adopting a general approach shortly.

## Preparation of the proposal

In its 2015 European agenda on migration, the Commission listed a key action, under the third pillar, 'Europe's duty to protect: a strong common asylum policy', to establish a CEAS monitoring system and provide guidance to 'improve standards on reception conditions and asylum procedures'.

On 23 September 2015, the Commission complemented the migration agenda with a [communication](#) 'Managing the refugee crisis', setting out priority actions to be taken within six months. In this communication, the Commission called on Member States 'to take urgent steps to transpose, implement and fully apply' CEAS instruments, including the Asylum Procedures Directive.

The Commission assessed the progress of the priority actions in its [communication](#) of 10 February 2016, publishing the state of play of the implementation of EU law in [annex 8](#). The Commission signalled 58 new infringement decisions taken after 23 September 2015, listing all letters of formal notice and reasoned opinions, including 21 on the transposition and implementation of the Asylum Procedures Directive.

On 16 March 2016, the Commission published a [communication](#) 'Next operational steps in EU-Turkey cooperation in the field of migration', ahead of the EU-Turkey statement of 18 March 2016. In this communication, the Commission discussed the legal safeguards for returning persons in need of international protection to Turkey. Pursuant to the [European Convention on Human Rights](#) and the [EU Charter of Fundamental Rights](#), every case needs to be treated individually following the

procedures laid out in the Asylum Procedures Directive. Therefore, the Commission assessed, there is 'no question of applying a "blanket" return policy, as this would run contrary to these legal requirements'. At the same time, the Commission took note of the option to apply, in certain circumstances, an accelerated procedure without examining the substance of the application. These claims would be considered inadmissible on the premise that the applicant has already been recognised as a refugee or would have sufficient protection in a 'first country of asylum', or has come to the EU from a 'safe third country' that can provide effective access to protection.

On 6 April 2016, the Commission [announced](#) a reform of the CEAS. While admitting that proper application of the existing rules is essential to manage the situation, the Commission referred to the conclusions of the European Council of [February](#) and of [March](#) 2016, which called for reform to enhance both the protection and efficiency of the current system.

As part of the second implementation package of the [migration agenda](#) presented on 13 July 2016, the Commission proposed the adoption of a [regulation](#) replacing the current Asylum Procedures Directive. The Commission explained that full harmonisation could best be achieved through a regulation, a directly applicable legal instrument that could be relied upon by individuals. However, the proposal was not accompanied by an impact assessment nor did the Commission present a report on the state of transposition of the directive (by the deadline of 20 July 2015 set by Directive 2013/32/EU) into national law.

As the 2016 proposal did not lead to the regulation's adoption by the co-legislators, the Commission presented an amended proposal in 2020. In its explanatory memorandum for the new proposal, the Commission specifies that it does not consider far-reaching amendments to the proposal necessary as the objectives of the 2016 proposal remain valid. However, as certain problems regarding the use of the border procedure, the definition of 'final decision' granting refugee or subsidiary protection status, as well as with subsequent applications and return, remained unresolved, the Commission addressed these issues through amendments. Again, no impact assessment was published but the Commission referred to a 2016 study on the transposition of the directive as well as to 2019 [EASO guidance on asylum procedure: operational standards and indicators](#).

## The changes the proposal would bring

In order to address the differences identified in the treatment of asylum applications, the proposal intends to establish a common procedure for international protection that would apply in the same way across the EU. The proposal also aims to make the procedure 'faster, simpler and more effective'.

### New pre-entry screening

In the 2020 proposal, the Commission formally introduces an additional step prior to the asylum procedure, although arguably many countries have already resorted to these [practices](#). Under the [proposal](#) for a regulation introducing screening, third-country nationals who are not authorised to enter the EU would be subject to pre-entry [screening](#) at the border, including identity, health and security checks. This new procedure would allow border authorities to channel these third-country nationals to either the asylum procedure or the return procedure or refuse them entry into the EU. With migratory flows in 2020 much more mixed than at the 2015 peak, the Commission expects this additional step to reduce the administrative burden of processing those asylum applications with very low probability of qualifying for international protection.

### Linking asylum and return procedures

The Commission considers it necessary to create a 'seamless link between asylum and return procedures' to promptly assess abusive applications or requests at the external border from applicants coming from third countries with a low recognition rate. Whereas the number of unsuccessful asylum applications remains high (around 370 000 applications for international protection are rejected every year), leading to return decisions, [return rates](#) remain low (EU total of

29 % in 2019). The aim is to close existing procedural loopholes and to address the delays caused by the fact that asylum and return decisions are issued in separate acts.

## Border procedures for asylum and return

In 2016, the Commission proposed an optional border procedure for accelerated processing of asylum applications. Parliament, while accepting that it should become obligatory in some cases, wanted to limit those cases as compared to the Commission proposal (for instance, excluding unaccompanied minors). The Council remained divided regarding cases where it would be obligatory to use the border procedure. The Commission undertook an evaluation of the current situation, [reporting](#) that 16 Member States have established border procedures and that their use is limited. According to the Commission, the reasons for this include problems in assessing the protection needs of applicants quickly, time needed for appeal procedures, lack of specific infrastructure and staff, and the improbability of rapid return of rejected applicants.

In the recast proposal, the Commission clarifies the scope for the use of the border procedure. New Articles 41(1) and (2) would specify that it **could be** applied only to applicants who have not yet been authorised to enter an EU Member State and do not meet the entry criteria set out in the [Schengen Borders Code](#). Moreover, the border procedure **should be** used under the new Article 41(3) in cases of irregular arrivals at the external border or following a disembarkation, and if one of the following grounds applies:

- the applicant presents a risk to national security or public order;
- the applicant has presented false information or documents or withheld information or documents regarding his or her identity or nationality that could have negatively impacted the asylum decision;
- the applicant is from a third country that has a recognition rate below 20 %.

The essential procedural guarantees contained in the 2016 proposal (Articles 11-17) such as the right for a personal interview and individual assessment of each case would be left intact. As for the duration of the border procedure (including court decisions), the Commission proposes 12 weeks in regular times (Article 41 of the amended proposal) and 20 weeks in times of crisis (Article 4(b) of the newly proposed Crisis and Force Majeure Regulation). A timeframe of 12 or 20 weeks is also set for return (Article 41a(2)).

An EPRS European implementation assessment on [Asylum procedures at the border](#), taking stock of the current use of border procedures, takes note of their significant costs and questionable outcomes. It refers to studies deploring the 'systematic and extended use of (de facto) detention' and limited access to procedural guarantees (right to information, legal assistance and interpretation). In many Member States, vulnerable applicants continue to be subjected to the border procedure and detention. As regards guidance, the border procedure framework established by the Asylum Procedures Directive is judged to be unclear and too complex, not least on account of cross-references to other provisions of the directive and to other CEAS instruments. In the same vein, neither the Asylum Procedures Directive nor the Reception Conditions Directive seem to specify where and under what conditions applicants can be accommodated during a border procedure. The authors of the EPRS European implementation assessment also point out that it is important to ensure that border detention facilities meet a dignified standard of living that would support the physical and mental health of applicants.

## Safe countries and inadmissibility

Article 36 of the current directive leaves Member States the discretion to set rules for the application of the safe country of origin concept and return the applicant to the country considered safe for the purposes of national asylum law. As discussed above, countries currently apply the safe country concepts to a diverging degree.



In the 2016 proposal, this option was replaced by an obligation, pursuant to which national authorities 'shall assess the admissibility of an application', and 'shall reject an application as inadmissible' if it is lodged by an applicant entering the EU from a first country of asylum or a safe third country. This wording does not leave discretion to the Member States and creates an obligation to reject those applications as inadmissible.

In the 2020 proposal, the Commission again acknowledges the need to use the safe countries of origin and safe third country concepts in a more harmonised way on the basis of information provided by EASO, leaving the 2016 proposal for Article 36 unchanged.

## Shorter procedures

In 2016, the Commission proposed to maintain the duration for a regular procedure at six months from lodging the claim. Under the current system, this can exceptionally be extended by a maximum of nine months in cases of increased pressure on the national asylum system or in highly complex cases. The new proposal shortens this time limit significantly, suggesting three months for an exceptional prolongation. The regulation also introduces the option of suspending the procedure should any changes in the country of origin appear (to be assessed regularly by EASO). In such cases, the maximum duration of the procedure would be 15 months.

For accelerated and inadmissibility procedures, which currently differ significantly across Member States, the Commission proposes to set the maximum durations to respectively two months and one month.

The pre-entry phase should be completed in five days if the procedure takes place at the border, or in three days if applied within the territory of a Member State.

## Detention

The new provisions, especially in connection with broader use of the border procedure, would be likely to [increase the use of detention](#) as Member States would be requested to examine claims without granting the applicants entry into their territory. The Commission explains that Member States are not obliged to use detention, and, indeed, should refrain from using it if applicable conditions and guarantees cannot be provided. However, Member States should be able to make limited use of detention both for asylum and return border procedures.

## Advisory committees

The European Committee of the Regions (CoR) is preparing its [opinion](#) on the new pact on migration and asylum. The rapporteur is Antje Grotheer (PES, Germany) and the opinion is expected to be adopted on 19 March 2021. In the working document, the rapporteur expresses concern that countries on the EU's external borders bear primary responsibility for arrival and registration, and calls for solidarity among Member States through fast distribution of asylum-seekers and greater involvement of the European Agency for Asylum and regional and civil society players. The rapporteur also draws attention to the need for the proposed border procedures to uphold human rights and the rule of law.

On the 2016 proposal, in its [opinion](#) 'Reform of the Common European Asylum System – Package II and a Union Resettlement Framework' (rapporteur: Vincenzo Bianco, Italy) adopted in February 2017, the CoR advised increasing the maximum length of the regular procedure from nine months to one year. It called for limitations on authorities' discretion in refusing legal assistance and for those who did not receive legal assistance during their first application to be given the right to remain. Regarding the third country concepts, the opinion stressed that 'mere transit through a third country on the way to the EU (...) cannot be considered sufficient grounds for returning the applicant to the country in question'.

The European Economic and Social Committee (EESC) adopted its [opinion](#) on the 'Screening regulation, amended proposal revising the asylum procedures regulation and the amended proposal revising the Eurodac regulation' at its plenary session on 24-25 February 2021. The rapporteur was Panagiotis Gkofas (Diversity Europe Group, Greece).

Previously, the EESC had addressed the reform of the Asylum Procedures Directive in its [opinion](#) on 'Common European Asylum System Reform Package II' (rapporteur José Antonio Moreno Díaz, Spain), which was adopted on 14 December 2016. The EESC stated that setting rules in the form of a regulation should not lead to a reduction in protection standards. The Committee recommended eliminating the 'automatic application of the concepts of safe third country, first country of asylum and safe country of origin' and ensuring the same procedural guarantees for all procedures.

## National parliaments

The deadline for the [subsidiarity check](#) was 19 January 2021. None of the 28 parliamentary chambers from 22 Member States that scrutinised the proposal raised subsidiarity concerns.

## Stakeholder views<sup>1</sup>

Stakeholders have expressed support for the objective of achieving more harmonisation through the adoption of a regulation, but have also warned against lowering the overall standards and raised concerns regarding some elements of the proposal.

In 2016, the [Meijers Committee](#), while agreeing that replacing the directive with a regulation could lead to greater harmonisation and allow asylum-seekers to rely directly on its provisions, feared that the change of legal instrument would lower standards currently in place in some Member States. The committee observed that this was especially probable since one of the objectives stated by the Commission was to reduce 'pull factors'. The committee was also critical of the proposed wider use of accelerated procedures, especially for applicants from 'safe countries of origin'. It recalled that the Court of Justice of the European Union had ruled that this is possible only when asylum-seekers from those countries are allowed to exercise in full the right to seek asylum. The committee warned against any automatic application of the accelerated procedures, especially when combined with detention, and questioned the compatibility of the new procedure with the European Convention on Human Rights. It referred to the risk of violating Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy) of the convention, especially in the light of the [Sharifi](#) judgment of the European Court of Human Rights.

In November 2020, the Meijers Committee published its [observations](#) on the new proposal, expressing several concerns regarding the mandatory nature of the border procedure. For instance, the committee does not consider the mere lack of travel documents to be sufficient grounds for applying the border procedure. They also fear the creation of a negative bias towards applicants coming from countries with a recognition rate of 20 % or lower to whom the border procedure would become mandatory. The committee questions the need to subject children above the age of 12 to a border procedure if travelling with their family. Moreover, the report is critical of certain provisions pertaining to the right of effective remedy for the applicant and the inconsistent link with the Return Directive.

In its [comments](#) on the 2016 regulation proposal, the European Council on Refugees and Exiles (ECRE) noted that while it included several improvements to the current standards, some provisions gave cause for serious concerns. While welcoming the extension of the obligation to provide free legal assistance in Article 15(1) of the proposal, ECRE firmly opposed the application of a 'merits-test' giving Member States the possibility to exclude the provision of free legal assistance and representation where 'the application is considered as not having any tangible prospect of success'. In the same vein, ECRE expressed extreme concern regarding the use of the safe country and admissibility concepts by default.

In its initial [comments](#) on the 2020 proposal, ECRE observes that the broader use of border procedures could result in two different standards of asylum procedures, which are mostly determined by the applicant's country of origin. This could jeopardise the individual right to asylum and impose a less thorough procedure on more people. ECRE also deplores the fact that the new proposal removes the automatic suspensive effect of an appeal, meaning that applicants will not have the right to remain on the territory pending a decision. As regards the suggestion to consider people in the pre-entry phase or border procedure as not having, for legal purposes, entered the Member State territory, ECRE considers it 'misleading' and in contrast with recent EU case law. At the same time, the legal concept does not affect the applicants' rights under EU and international refugee law. Regarding the broader use of the border procedure, ECRE already expressed its opinion in a 2019 [policy note](#) recommending that instead of mainstreaming the border procedure, EU Member States should rather ensure fair and efficient regular asylum procedures. ECRE suggests that the implementation of such procedures could be regularly monitored by the European Commission, which would have the power to launch infringement procedures as needed. As for the increased use of detention in border procedures, ECRE questions the compatibility of additional grounds for deprivation of liberty with international human rights law.

The United Nations Refugee Agency (UNHCR), in its [legal considerations](#) on the return of asylum-seekers and refugees from Greece to Turkey, under the safe third country and first country of asylum concepts, asserted that the 'first country of asylum' concept should be applied only in cases where 'a person has already, in a previous state, found international protection, that is once again accessible and effective for the individual concerned'. As regards the 'safe third country' concept, UNHCR underlined that this applies in situations 'where a person could, in a previous state, have applied for international protection, but has not done so, or where protection was sought but status was not determined'. Both require an individual assessment of the case in accordance with the standards laid down by the 1951 [Geneva Convention and its Protocol](#) to ensure not only that the principle of *non-refoulement* is respected, but also that 'sufficient protection' is available and that the third country readmits the person. UNHCR observed that while the current directive does not define sufficient protection, an interpretation of the provision in the light of [Article 18](#) of the EU Charter of Fundamental Rights would suggest it 'goes beyond protection from *refoulement*'.

Ahead of the publication of the amended proposal in 2020, UNHCR and the International Organization for Migration (IOM) [called](#) for a truly common and predictable approach to migration and asylum management instead of ad-hoc solutions. They also emphasised the detrimental socio-economic impact of the Covid-19 pandemic on refugees, migrants and host countries.

## Academic views

Daniel Thym from the University of Konstanz (Germany) [considers](#) the border procedure in the proposal for a common procedure regulation one of the substantial changes in the new pact. While admitting that on paper the procedural guarantees stay in place, he points to structural problems with implementation, as witnessed at the [Hungarian](#) and [Greek](#) borders, leading to the violation of migrants' rights. Moreover, the Commission leaves unanswered the question of how national authorities are expected to complete the border procedure within 12 or 20 weeks while they are already struggling to meet the deadline of 6 months set out in the regular asylum procedure.

Jens Vedsted-Hansen from Aarhus University [notes](#) that the Commission's proposal to issue a return decision immediately upon a rejection of an asylum application, or even in the same decision, would be a useful step. While understanding the purpose of rapid assessment of 'abusive asylum requests or asylum requests made at the external border by applicants coming from third countries with a low recognition rate', he questions the proposal's addition of a new ground for border procedure for applicants from countries with an asylum recognition rate of 20 % or lower. In his view, making accelerated examination mandatory in this way risks having a detrimental effect on the quality of decisions and violating the rights of third-country nationals in need of protection.

## Legislative process

The legislative proposal ([COM\(2020\) 611 final](#)) was published on 23 September 2020, as an amendment to the pending legislative proposal ([COM\(2016\) 467](#)), published on 13 July 2016. It falls under the ordinary legislative procedure ([2016/0224\(COD\)](#)). In the European Parliament, the proposal was assigned to the Civil Liberties, Justice and Home Affairs Committee (LIBE) where Laura Ferrara (then EFDD, Italy) was rapporteur for the previous 2016 proposal. The new 2020 proposal was taken over by the Renew Europe group, with Fabienne Keller (France) appointed as rapporteur.

### EP SUPPORTING ANALYSIS

Dumbrava C., [Screening of third-country nationals at the EU's external borders](#), EPRS, European Parliament, November 2020.

[European Implementation Assessment on Asylum procedures at the border](#), EPRS, European Parliament, November 2020.

Radjenovic A., [Reforming asylum and migration management](#), EPRS, European Parliament, October 2020.

Radjenovic A., [Reception of asylum-seekers – recast Directive](#), EPRS, European Parliament, March 2019.

[The Implementation of the Common European Asylum System](#), study for the LIBE committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, May 2016.

[EPRS implementation appraisal of Regulation 604/2013 \(Dublin Regulation\) and asylum procedures in Europe](#), EPRS, European Parliament, April 2016.

[New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection](#), study for the LIBE committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2014.

### OTHER SOURCES

[Asylum procedure regulation](#), European Parliament, Legislative Observatory (OEIL).

### ENDNOTES

- <sup>1</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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