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10 March 2017

First edition

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

Please note this document has been designed for on-line viewing.

European Union Agency for Asylum

The European Asylum Support Office provides Member States with support in fulfilling their obligations under the Common European Asylum System. Since its establishment in 2010, the support office's role has been progressively expanded in order to reflect changes in the EU's legal framework on asylum and to respond to the growing needs of Member States.

In the context of the current migration and refugee crisis, the European Commission has presented a proposal to amend and expand the mandate of European Asylum Support Office with a view to turning it into a fully fledged agency. According to the proposal, the agency will ensure the efficient and uniform application of European Union asylum law in order to achieve greater convergence between Member States' asylum systems.

The proposal is part of a first set of legislative proposals put forward by the European Commission in May 2016 in order to reform the Common European Asylum System.

Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

COM(2016) 271, 4.5.2016, 2016/0131 (COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

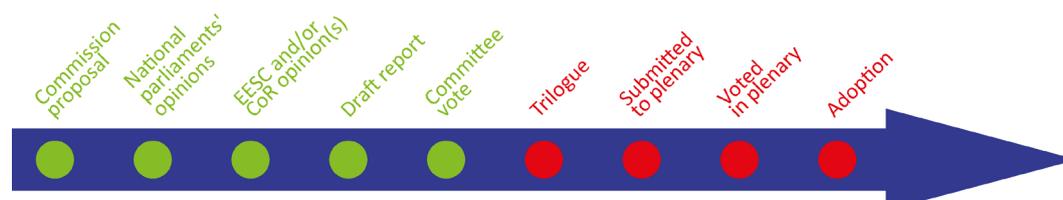
Committee responsible: Civil Liberties, Justice and Home Affairs (LIBE)

Rapporteur: Péter Niedermüller (S&D, Hungary)

Shadow rapporteurs:

- Carlos Coelho (EPP, Portugal)
- Jussi Halla-Aho (ECR, Finland)
- Cecilia Wikström (ALDE, Sweden)
- Martina Anderson (GUE/NGL, UK)
- Josep-Maria Terricabras (Greens/EFA, Spain)
- Laura Ferrara (EFDD, Italy)

Next steps expected: Trilogue negotiations



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Introduction

The European Asylum Support Office ([EASO](#)) was set up in 2010 in order to contribute to the implementation of the Common European Asylum System ([CEAS](#)), facilitate practical cooperation among Member States on asylum-related matters and assist Member States subject to particular pressure on their asylum and reception systems.

The [proposal](#) for a regulation on the European Union Agency for Asylum seeks to amend and expand the mandate of EASO in view of turning it into a fully-fledged agency. The Agency will have the task to ensure the efficient and uniform application of Union asylum law across Member States in order to achieve greater convergence and to prevent secondary movements of asylum-seekers.

The proposal is part of an initial package of legislative proposals put forward by the European Commission in May 2016 in a bid to reform the CEAS. The package also includes proposals to revise the [Eurodac Regulation](#) and the [Dublin Regulation](#). A second set of proposals was presented in July 2016 and includes recast proposals on a common [procedure](#) for international protection, [qualification](#) standards and [reception](#) conditions.

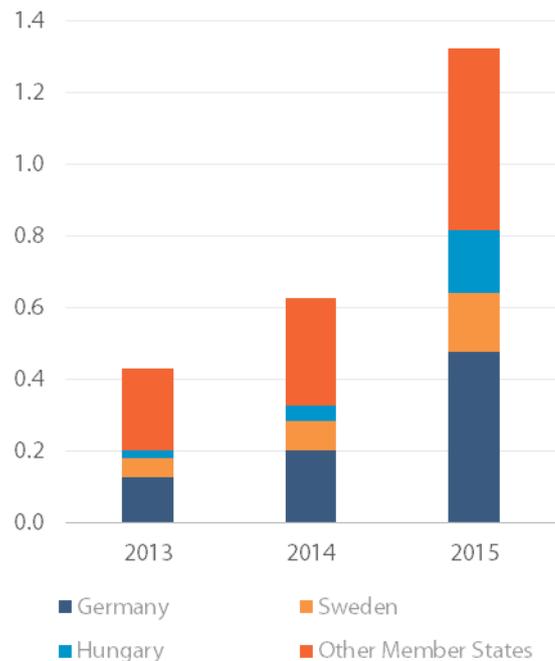
Context

The unprecedented influx of [irregular migrants](#) and [asylum-seekers](#) into the EU since 2015 has revealed the structural weaknesses of the CEAS. The number of asylum applicants rose from 0.4 million in 2013 to 1.3 million in 2015, while the distribution of asylum applications across Member States remained highly uneven. In 2015, three countries (Germany, Hungary and Sweden) registered almost two thirds of the total number of individual asylum applications lodged in the EU (see Figure 1). According to partial figures published by [Eurostat](#), in 2016 there were 765 020 new asylum applicants in the EU, the majority of whom (745 155) lodged their applications in Germany.

Confronted with intense migration pressures, 'frontline' Member States on the EU's southern and eastern borders have failed to systematically register and fingerprint all persons crossing the border irregularly, as required by EU law. In order to prevent migrants from moving further into the EU, several Member States reinstated [temporary border controls](#) at the EU's internal borders.

The pressure generated by the current migration crisis exacerbates pre-existing imbalances in the European asylum system. Despite efforts to harmonise asylum

Figure 1 – Asylum applications in the 28 EU Member States (million)



Data source: [Eurostat](#).

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standards in the EU, pronounced [differences](#)¹ between Member States' asylum policies persist, with particular regard to recognition rates, the rights of asylum-seekers and reception conditions. This gives migrants an incentive to take advantage of differing conditions ('asylum shopping') and encourages secondary movements within the EU.

Existing situation

EASO was established by [Regulation No 439/2010](#)² and became operational in February 2011. Its aims are to contribute to the implementation of the CEAS, to support practical cooperation on asylum and to assist Member States subject to significant pressure on their asylum and reception systems. EASO was also designed to become a European centre of expertise in the area of asylum, with responsibility for collecting, analysing and sharing information on the implementation of the asylum *acquis*.

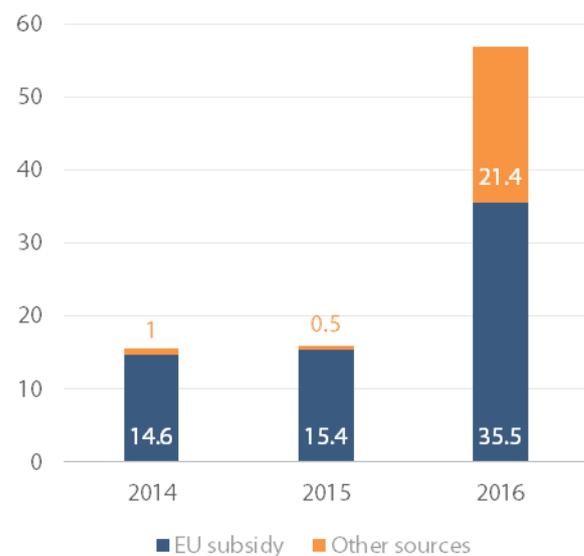
Expanded role

Since its establishment, EASO's role has been gradually expanded in order to reflect changes in the EU legal framework on asylum and to respond to the Member States' growing needs. The recast of the EU Asylum package in 2013 reinforced EASO's role in supporting Member States' efforts to implement the CEAS, providing relevant data and information on asylum and delivering training. To assist Member States facing an inordinate amount of pressure on their asylum systems, EASO organised and deployed asylum support teams consisting of national experts from Member States.

EASO was given a key role in the Early Warning, Preparedness and Crisis Management Mechanism (EWM), as provided for in Article 33 of the recast [Dublin Regulation](#). EWM aims to detect deficiencies and situations of pressure in national asylum systems with a view to ensuring that Member States take appropriate measures to avert further deterioration of the asylum system. The mechanism has never been activated to date.

EASO was called to play a major role in implementing the immediate actions outlined in the [European Agenda on Migration](#) that focused on strengthening the EU emergency response to the unfolding migration

Figure 2 – EASO budget (€ million)



Data source: [EASO](#).

1 E. Guild and S. Carrera, [Rethinking asylum distribution in the EU: Shall we start with the facts?](#), CEPS Commentary, 17 June (2016).

2 In line with the provisions of [Protocols](#) 21 and 22 annexed to the Treaties, Denmark did not take part in the adoption and application of Regulation No 439/2010, whereas the United Kingdom and Ireland did opt to participate.



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crisis. Together with Frontex and Europol, EASO has been present in the [hotspots](#) in Greece and Italy and assisted with the identification, fingerprinting and registration of incoming migrants. It is involved in the implementation of the EU [relocation programme](#), of the [EU-Turkey statement](#), and of the EU resettlement schemes. The European Commission has called upon EASO to further increase its role in a number of areas, including in identifying risk trends, providing Member States with guidance on improving standards of reception conditions, and developing guidelines for maximising legislative provisions against abuses.

To enable the Agency to fulfil its new tasks, EASO's budget was increased from €15.9 million in 2015 to €56.9 million in 2016 (as amended in September 2016) (Figure 2).

Shortcomings

In the context of greatly increased demand for assistance, EASO has been facing difficulties in recruiting and deploying experts. The European Commission, in its [Seventh report on relocation and resettlement](#) of 9 November 2016, urged Member States to respond more promptly to EASO's calls for experts in order to ensure the adequate presence of EASO on the ground. Currently, in Greece EASO requires the permanent deployment of 28 experts to support the relocation scheme. The number of asylum experts also falls short of the number needed under the contingency plan in Italy.

The [study](#) on the Implementation of the Common European Asylum System, prepared for the LIBE Committee in May 2016, recommended extending EASO's mandate to cover screening functions, including assessment and decision making on the eligibility of asylum applicants for relocation (under a permanent EU relocation system). It argued that, in the long run, the agency should 'gradually take responsibility for processing asylum claims in one single asylum procedure' and 'should have the competence to grant international protection status to applicants, mutually recognised throughout all EU Member States'.

The [study](#) on the reform of the Dublin III Regulation, prepared for the LIBE Committee in June 2016, noted that EASO's assistance had 'not yet had a strong impact in operational terms' owing to its limited resources and reduced scale of operations. The study suggested centralising support services for status determination in the hands of a new asylum agency and conferring on it the task of determining the Member State responsible for international protection.

In 2014 [Amnesty International](#) pointed out that 'the financial resources allocated to this agency do not reflect the high expectation placed on it to support EU Member States and institutions'. It also criticised EASO's lack of transparency with regard to its activities.

Parliament's starting position

The European Parliament has consistently called for an enhanced role for EASO in order to ensure the full implementation of the CEAS. In its [resolution](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration, of 17 December 2014, the European Parliament called for reflection on the future development of the EASO and urged Member States to show solidarity and commitment by making sufficient contributions to EASO's budget and operations.



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In its [resolution](#) of 12 April 2016, Parliament called for EASO to be made into a fully-fledged EU agency that would ensure the uniform application of CEAS rules and would provide Member States with enhanced operational support. Parliament also called for additional funding for EASO so as to provide proper support for its enhanced role in the context of the migration crisis and refugee crisis. The call for funding was renewed in the [resolution](#) of 6 July 2016 on the preparation of the post-electoral revision of the 2014-2020 multiannual financial framework.

Council and European Council starting position

The **European Council's** 2014 strategic [guidelines](#) identified the reinforcement of EASO as one of the measures needed for the strengthening of the CEAS. The European Council has, on several occasions, called upon EASO to step up its assistance to Member States.

The **Council** has also showed support for the expansion of EASO's role. On 21 April 2016 the Justice and Home Affairs Council [called](#) upon EASO to develop a role as the clearing house for national 'country of origin' information.



Proposal

Preparation of the proposal

The reinforcement of EASO is an integral part of the strengthening of the CEAS, as outlined by the European Commission in the [European Agenda on Migration](#) of 13 May 2015. In its [communication](#) 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe' of 6 April 2016 the Commission announced a set of proposals for reforming the CEAS: establishing a sustainable and fair system for determining the Member States responsible for asylum-seekers, reinforcing the Eurodac system and developing an enhanced mandate for the EASO.

The proposal for an EU Agency for Asylum builds on two evaluations of EASO. The Commission's 2013 [internal evaluation](#) was rather limited in scope. It did however acknowledge certain deficiencies with regard to EASO's capacity to deploy experts and thus urged Member States to respond promptly to its calls for experts and assets.

The [external evaluation](#) of EASO, concluded in 2015, found that EASO had generally implemented its key tasks effectively and that it had demonstrated adequate crisis response capacity. The evaluation pointed to several shortcomings and risks, however, such as potential operational overlaps with other justice and home affairs agencies and networks and a rather underdeveloped strategy on cooperation with third countries. The evaluators recommended revising EASO's mandate in order to reflect its enhanced role in the areas of joint processing, integration, reception and return.

The [report](#) on the evaluation of the Implementation of the Dublin III Regulation, prepared for the European Commission in March 2016, looked into why EWM has never been triggered, despite several situations of extreme pressure on national asylum systems, and found that EASO had provided only a limited collection of data and quantitative indicators that were insufficient for the European Commission to activate the mechanism.

The changes the proposal would bring

Monitoring and assessing the implementation of the CEAS

The agency will **operate the reference key** for the application of the corrective mechanism envisaged by the new Dublin system. It will participate in the Eurodac system by taking fingerprints, collecting and processing personal data. The agency will be tasked with monitoring and assessing **all aspects of the CEAS**, including asylum procedures, the Dublin system, recognition rates, the quality of international protection afforded, and compliance with operating standards and guidelines. Moreover, the agency will be **able to intervene** in support of a Member State when the functioning of the CEAS is jeopardised and the Member State concerned fails to take remedial action.



Preparation of the proposal

The changes the proposal would bring

Ensuring enhanced practical cooperation and an exchange of information

The agency will gather and analyse information on the asylum situation in the EU and in relevant third countries. It will play a stronger role in analysing the situation in **countries of origin** and provide advice on safe countries of origin. The agency will be able to rely on information from Member States, which will now have **a duty to cooperate** and an obligation to exchange information. The agency will establish and coordinate a network on country of origin information. Member States will have an **obligation to use** the information published by the agency and to inform it of their decisions on international protection for applicants whose country of origin was subject to joint analysis. The agency will also assist the European Commission with a regular review of the situation in third countries on the common EU list of safe countries of origin.

Promoting EU legal instruments on asylum and issuing implementing rules

The agency will have the **power to adopt** various types of technical document, such as performance standards, guidelines and best practice regarding the implementation of EU legal instruments in the field of asylum on the basis of its initiative or at the request of the Commission. Member States will have the **obligation to observe** these rules.

Stepping up operational and technical assistance for Member States

The agency will continue to deploy asylum support teams and will set up an **asylum intervention pool** composed of a reserve of at least 500 asylum experts. In a new departure, the deployment of experts from the asylum intervention pool will be **mandatory** on Member States. Experts forming part of the asylum support teams or deployed from the asylum intervention pool will be able to consult relevant national and European databases.

Enhanced role in cooperation with third countries

The proposal provides more clearly for possibilities for cooperation between the agency and third countries. The agency will be able not only to coordinate the exchange of information between Member States and third countries but also to engage in **operational cooperation**.

Budgetary implications

In order to enable the agency to fulfil its mission under the expanded mandate, the proposal provides for a budget of **€363.963** million for the 2017-2020 period and for a staff increase of **357 members** over the same period.

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Views

Advisory committees

The **Committee of the Regions (CoR)**, in its [opinion](#) on the reform of the Common European Asylum System, of 8 December 2016, welcomed the reinforcement of the European Asylum Support Office and called on the new European Agency for Asylum to cooperate with regional and local authorities and to provide assistance for regions in the frontline of reception. It also suggested that the reinforced agency 'be given responsibility for monitoring and reporting any failures to comply with [CEAS] requirements, partly so that the European Commission can apply penalties'.

In its [opinion](#) adopted on 19 October 2016, the **European Economic and Social Committee (EESC)** expressed its support for the proposal but called for the Consultative Forum to be given a greater role and for better use to be made of the information provided by these organisations when monitoring the implementation of the CEAS.

National parliaments

The deadline for the subsidiarity check passed on 29 September 2016. Chambers of [national parliaments](#) from 17 Member States considered the proposals and a number submitted comments for political dialogue. The Parliament of Czech Republic submitted an [opinion](#) in which it disagreed with granting the agency the power to intervene in a Member State on its own initiative and rejected the obligation for Member States to take into account the agency's joint analysis on countries of origin or any other standardised procedures. In its [opinion](#), the Polish Senate also opposed the agency's ability to intervene in the territory of a Member State without its approval.

Stakeholders' views³

In a [policy note](#) of 20 January 2017, the **European Council on Refugees and Exiles (ECRE)** stated that some of the changes put forward by the proposal raised 'fundamental questions relating to the new agency's accountability, impartiality and independence'. While welcoming the strengthening of EASO's role in monitoring and assessment, ECRE pointed to several risks related to the fact that the proposed agency lacked a protection mandate, had broad and unjustified powers to process applicants' personal data and could violate the principles of confidentiality and non-disclosure of information to the alleged persecutor when engaging in practical cooperation with third countries. In its [comments](#) of July 2016, ECRE had expressed doubts about the ability of the new agency to ensure high standards of protection given the overall direction of the CEAS reform, which is likely to generate a 'race to the bottom' in terms of refugee protection.

³ 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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The **European Data Protection Supervisor (EDPS)** issued an [opinion](#) on 21 September 2016, in which he recommended making several clarifications in the text in order to indicate that responsibility for processing personal data will be with the Member States, to clarify the term 'administrative purposes' used in Article 30(3), and to specify responsibilities for ensuring the security of the agency's equipment.

Other [commentators](#) raised concerns about the significant increase in the data to be collected, stored and shared by the agency and about its unclear role in processing applications in Member States.

Academic views

The idea of a European asylum agency with wider competences has been put forward by several academics. [Guy Goodwin-Gill](#)⁴ has argued for a genuine European migration and protection agency to ensure that Member States fulfil their individual obligations to refugees and migrants. This protection agency would be tasked with establishing procedural rules governing the determination of claims to protection. [Elsbeth Guild](#)⁵ maintains that 'a new agency may be the best viable route to achieving a real and effective CEAS'. However, such an agency should be 'truly dedicated to international protection' and not driven by a rationale of reducing recognition rates and minimising protection standards.

According to a [study](#)⁶ by the Centre for European Economic Research (ZEW), a European asylum agency could offer economies of scale leading to a more cost effective system and would also eliminate current incentives for refugees to concentrate on a few countries.

4 G. Goodwin-Gill, [Regulating 'Irregular' Migration: International Obligations and International Responsibilities](#), Notes for a Keynote Address, University of Athens (2015).

5 E. Guild, '[Does the EU Need a European Migration and Protection Agency?](#)' *International Journal of Refugee Law* (2016).

6 M. Berger and F. Heinemann, '[Why and How There Should Be More Europe in Asylum Policies](#)', ZEW Policy Brief, No 1 (2016).



Legislative process

The legislative proposal ([COM\(2016\) 271](#)) was published on 4 May 2016. It falls under the ordinary legislative procedure ([2016/0131/COD](#)).

In the European Parliament the proposal was assigned to the Civil Liberties, Justice and Home Affairs Committee (LIBE) under the rapporteurship of Péter Niedermüller (S&D, Hungary). The rapporteur presented his [draft report](#) on 7 September 2016. The draft report welcomed the Commission proposal and put forward several amendments, which focused on: strengthening the relationship between the agency and UNHCR; reinforcing fundamental rights safeguards, in part by appointing a fundamental rights officer, establishing a complaints mechanism, and appointing a data protection officer; ensuring adequate training and developing a code of conduct for experts; providing access for the agency to relevant EU databases, such as Eurodac, VIS, SIS II and Entry-Exit; and making the European Parliament and the Council jointly responsible for appointing the executive director and the deputy executive director of the agency. The Committee on Foreign Affairs prepared a [draft opinion](#) on 6 October 2016 and the Committee on Budgets adopted an [opinion](#) on 12 October 2016. On 8 December 2016, LIBE [backed](#) the proposal and approved a negotiating mandate and team with a view to reaching a first-reading deal with the Council on the legislative proposal.

The Justice and Home Affairs (JHA) Council, [meeting](#) on 9 and 10 June 2016, took note of the European Commission's first set of proposals to reform the CEAS. At the [meeting](#) of 13-14 October 2016 the JHA Council decided, on a suggestion from the Council Presidency, to focus on examining the legislative proposals on the revision of Eurodac and EASO regulations with the aim of achieving progress towards the Council's general approach by the end of the presidency term. Several ministers indicated that the agency should not replace the role of the Commission in monitoring the implementation of EU law but rather play a supporting role for Member States. On 20 December 2016, the Permanent Representatives Committee [endorsed](#), on behalf of the Council, a mandate for negotiations on the regulation on the European Union Agency for Asylum.



References

EP supporting analysis

[Reception of asylum-seekers – recast Directive](#), EPRS, November 2016.

[Resettlement of refugees: EU framework](#), EPRS, October 2016.

[Recast Eurodac Regulation](#), EPRS, October 2016.

[Reform of the Dublin system](#), EPRS, September 2016.

[Hotspots and emergency relocation: State of play](#), EPRS, March 2016.

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[The Implementation of the Common European Asylum System](#), EP Policy Department C, May 2016.

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