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Common European Asylum System

DG HOME – Unit C.3 – Asylum

Disclaimer: ***These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union'***

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Aim to cover the main legislative pillars of the Common European Asylum System (CEAS) :

1. Dublin Regulation
2. Eurodac
3. Qualification Regulation
4. Asylum Procedures Regulation
5. Reception Conditions Directive
6. European Union Asylum Agency
7. Resettlement Framework

- ***NEGOTIATIONS ARE STILL UNDERWAY ON ALL THE FILES***
- ***IMPLEMENTATION REQUIREMENTS MAY CHANGE DEPENDING ON FINAL OUTCOMES OF NEGOTIATIONS***

Dublin system

- A system of determining a Member State responsible for examining an asylum application

Dublin Regulation - criteria :

Responsibility criteria applied in hierarchical order:

Unaccompanied minors

nuclear family members

residence permits/visas

illegal entry/stay – visa-waived entry

MS where application lodged ("default criterion")

Dublin Regulation - procedures

- **Request for taking charge:** when on the basis of the criteria other MS is responsible
- **Request for taking back:** person is in another MS than the one determined as responsible based on the responsibility criteria
- **Transfer of the applicant**
- **Specific procedural rules** concerning time limits ("shift of responsibility" for non-compliance); cessation of responsibility; evidence; exchange of relevant information;

Rights of applicant: provision of information, personal interview/effective opportunity to provide info; notification of transfer decision; effective remedy

Dublin Regulation – administrative arrangements and cooperation

- Designation of **specific competent authorities**, which need necessary resources and their notification to COM
- **DubliNet**: a secure bilateral electronic transmission channel for all requests (take charge, take back, information) replies and all written correspondence between MS. Exception: correspondence between MS regarding the practical arrangements for transfers;
- MS may establish **bilateral administrative arrangements**, in order to facilitate and increase the effectiveness of the Regulation

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New elements of COM 2016 proposal:

- ***Stable responsibility*** *of a MS once determined*
- *A* ***corrective allocation mechanism*** *to automatically establish when a MS is handling a disproportionate number of asylum applications – if one MS receives disproportionate numbers above 150% of the reference number, all further new applicants be relocated across the EU ;*
- *Option to temporarily not take part in the reallocation subject to* ***solidarity contribution***

A more efficient system

- *Shorter time limits for sending transfer requests, receiving replies and carrying out transfers of asylum seekers between MS, and removing shifts of responsibility;*
- *clearer legal obligations for asylum applicants, including a duty to remain in the MS responsible for their claim, geographic limits to the provision of material reception benefits and proportionate consequences in case of non-compliance;*

Complex negotiations are underway

- *Key discussions centre around the balance between responsibility and solidarity*
- *Discussions on concept of "allocation" and proposed mechanism continue*

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EURODAC III Proposal

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Main functions:

- *Maintain and enhance biometric evidence for the implementation of the Dublin proposal.*

- *Cater to wider immigration purposes and extend scope to allow MS to identify irregular third-country nationals.*

- *Maintain law enforcement access.*

Obligation to take biometrics

- ***New obligation*** *to take facial images (besides fingerprints).*
- *MS can introduce sanctions for those individuals who refuse to provide biometrics.*
- *Biometrics taken from children from age 6 (as opposed to 14 currently) and must be carried out in child-appropriate/friendly manner.*
- *Minors and vulnerable persons should not be subject to sanctions where biometrics cannot be taken for health reasons.*

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Facial images and facial recognition software

- *Facial images to be added to the Central System along with biographic data and fingerprints.*

- *Facial recognition software to be introduced in the long-term after eu-LISA conducts technical assessment of technology.*

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Storing and comparing more data

- *All three categories of data will be stored and compared.*
- *More personal data transmitted and stored in Central System, e.g. name(s), d.o.b, nationality, travel documents.*
- *Addition of new biometric identifier – facial image*

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Data Retention Proposed

- *CAT 1 - 10 years*
- *CAT 2 – 5 years*
- *CAT 3 – 5 years*

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Permission for EBCG and EASO experts to take biometrics

- *MS may allow EBCG to take biometrics on their behalf at border for CAT 1 and CAT 2*

- *MS may allow EASO MS trained experts to take biometrics on their behalf for CAT 1*

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Update on negotiations/achievements :

Co-legislators reached a partial provisional agreement last June

Still under discussion are issues relating to resettlement and the data retention period for Category 1 (asylum applicants)

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Qualification Regulation Proposal

1. General consideration

Change from Directive to Regulation: there is no longer a provision allowing for more favourable provisions - this means:

- **as regards qualification :** national humanitarian status can be granted to those who do not qualify for IP but it should be issued in a way that does not lead to confusion with international protection
- **as regards the content of protection :** MSs cannot grant more favourable provisions, but to note almost all rigths are defined through equal treatment

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2. Further harmonizing the common qualification criteria to get and keep protection

- **Internal protection**

  Obliging MS to assess the possibility of internal protection

- **Reasons of persecution, acts of persecution, actors of protection**

A lot of small but important clarifications on the basis of case law

- **Sur place claims can be refused**

  if reasons are created by the applicant to get protection

- **Exclusion**

  More precise rules as regards minors and proportionality assessment; terrorist acts

- **Withdrawal**

  Obligation to withdraw in case of security concerns or serious crime

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Further precision of the content of protection

- ***residence permit*** : *validity and format, issuance, while keeping the differentiation between refugees and subsidiary protection;*
- ***travel document*** *: minimum rules on validity thereby harmonising security/biometric features of the document;*
- ***employment/social rights****: scope is clarified (what benefits are considered social security, what is social asssistance where limitations are allowed).*
- ***integration*** *allowing MSs to cut social benefits if obligatory integration measures are not followed*
- ***information rights*** *on the content of protection are enhanced, (defined in an annex)*
- ***family unity****: scope is extended to families formed in transit countries, further specifications added in the course of the negotiations (unmarried couples, dependant children)*

More convergence of asylum decisions through EASO guidance

Obligation to take into account EASO guidance when assessing:

- **actors of protection**
- **availability of internal protection**
- **reviewing the refugee/subsdiary protection status**

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State of play : negotiations ongoing

Much of what was proposed by COM has been preserved in terms of

- harmonisation of the criteria for assessing the merits of asylum claims
- status is granted only for so long as protection is needed
- clarifying of rights and obligations of a beneficiary,
- ensuring effective integration
- discouraging secondary movements

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Asylum Procedure Regulation Proposal

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1.Streamlining & simplifying procedures

- **Access to procedure**
  - **Deadlines introduced for the different steps of the procedure : Making an application** (as soon as a third country national express a wish to receive international protection)
  - **Registering an application** (promptly or within 3 working days from when an application is made)
  - **Lodging of the application** (within 10 working days from registration)
  - Issuance of **documents to the applicant** upon registration and within 3 working days from lodging

2. Admissibility of applications (Art. 36)

- Mandatory use of admissibility grounds:
  - **First country of asylum**
  - **Safe third country**
  - **Subsequent application**
  - **Unjustified separate application by spouse / dependant child**
- Obligation of first application to carry out admissibility assessment on FCA/STC
- Admissibility assessment need not be carried out by MS responsible
- Manifestly unfounded applications may be rejected without admissibility assessment

3. Accelerated examination and border procedures

- Accelerated examination procedure (mandatory)
  - **Grounds:**
    - Abusive claims that may be found manifestly unfounded
    - Safe country of origin
    - Applications intended to delay or frustrate return
    - Applicant does not apply in first country of irregular entry or legal residence or absconds to another MS
    - Abusive subsequent application without tangible prospect of success
- Border procedure (optional)
  - **Grounds for admissibility or accelerated examination procedure**

4. Safe country concepts

- Harmonisation of rules on safe countries
- Procedural consequences:
  - **FCA/STC – inadmissible unless readmission not possible**
  - **SCO – accelerated/border procedures - manifestly unfounded**
- Establishment of EU lists / designations – EUAA to assist COM with reviewing lists
- Procedure for removing third countries from EU lists
- Sunset clause of 5 years to harmonise lists
- No automatic suspensive effect of appeal for FCA and SCO

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Update on negotiations/achievements :

- *Many of these issues are still under discussion also because of their links to the other CEAS proposals in particular Dublin and Return.*

- *The most sensitive issues remain the scope and nature of the different procedures : admissibility, border procedure, and the safe country concepts*

Reception Conditions Directive Proposal

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Reform of the Reception Conditions Directive

3 goals :

- *Further harmonise reception conditions in the EU*
- *Reduce incentives for secondary movements*
- *Increase applicants' self-reliance and possible integration prospects*

1. More harmonised reception conditions in the EU and equal and dignified reception standards

New definition of "material reception conditions': reference to ***essential non-food items added*** *:*

"material reception conditions" : means the reception conditions that include housing, food, clothing ***and other essential non-food items matching the needs of the applicants in their specific reception conditions, such as sanitary items,*** *provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance" (Article 2(7))*

- *MS to take into account operational standards and indicators on reception conditions developed at EU level*
- *MS to draw up and constantly update* ***contingency plans*** *for use in situations of disproportionate pressure:*

  - ***to be monitored and assessed by EUAA (Chapter 5 of EUAA).***

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Reinforced guarantees for persons with special reception needs, including UAMs

More detailed rules for assessing, determining, documenting and addressing applicants' special reception needs as soon as possible and throughout the reception period.

UAMs

- Stricter time limits (5 working days) for assigning a guardian;
- Limitations to the number of UAMs that guardians may be in charge of;
- Obligation to monitor guardians and review complaints against guardians;

2. Tools for fighting abuse and secondary movements

Member States to:

- ✓ *only grant certain reception conditions - Articles 14 (schooling), 15 (employment) and 16-17 (material reception conditions) to applicants who are* ***required to be present*** *on their territory (Dublin proposal + new Article 17a RCD)*
- ✓ *BUT: always ensure a dignified standard of living for all applicants, grant necessary health care (Art 18) and provide ‘ suitable educational activities’*

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Member States to:

decide where an applicant shall reside and require applicants to regularly report to authorities when this is necessary to prevent the applicant from absconding;

New ground for detention :

In case an applicant has been assigned a specific place of residence but has not complied with this obligation, and if there is a continued risk that the applicant may abscond, the applicant may be detained in order to ensure the fulfilment of the obligation to reside in a specific place. (Article 8(3)(c))

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Stricter rules on travel documents

- *Only for serious humanitarian reasons and other imperative reasons :*
    - **medical treatment or visit close relatives for particular reasons (marriages, funerals, seriously ill relatives).**

New grounds for replacing, reducing or withdrawing reception conditions:

The applicant:

- *fails to attend compulsory integration measures* NEW
- *has not applied for asylum in MS of first irregular / legal entry* NEW
- *has been sent back after having absconded to another MS* NEW

3. Enhance self-sufficiency and integration of applicants

Member States to:

- ✓ *grant applicants access to the labour market earlier (deadline reduced from 9 to 6 months) and under more favourable conditions*
- ✓ *encouraged to grant access no later than three months where the application is **likely to be well-founded***
- ✓ *not grant access to the labour market if application is **likely to be unfounded** and is subject to an accelerated procedure on the merits*

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State of play : negotiations ongoing with following principles preserved

- ***Clear rules on the management of MS reception systems*** *– possibility to assign applicant across the territory or to geographical areas, restriction of freedom of movement, residence, reporting obligations*
- ***Contingency planning*** *– obligation for MS to have a plan in case a large number of applicants arrive at the same time*
- ***Clarification that applicants are provided reception conditions only if they are in the "right" MS***
- ***Earlier access to the labour market*** *– possible from 5 or 6 months; available only to applicants with well-founded claims*

European Union Asylum Agency (EUAA) Proposal

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Current mandate of EASO

- *Provides capacity building support to MS and 3rd countries though eg. training and development of tools etc;*
- *Provides operational support through deployment of experts in the context of hotspots (Greece and Italy) and in MS requesting support (Cyprus and Bulgaria);*
- *Information and analysis : statistics and trends on asylum; country of origin information; information and documentation*

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Proposal by COM of 2016

Co legislators reached a compromise on the following elements in June 2017 :

- ***Increased support to Member States regarding the implementation of the CEAS****, through enhanced practical cooperation and exchange of information.*
- *Promoting Union law and* ***safeguard a high degree of uniformity by developing operational standards, indicators guidelines and best practices*** *on asylum-related matters to support harmonised implementation of the CEAS.*
- ***Regular monitoring of Member States' operational and technical application of the CEAS*** *to prevent or identify possible shortcomings and provide relevant support.*

- *Development of reliable **information on third countries**, including for the purposes of the designation of safe countries of origin and safe third countries at EU level.*
- *Provision of **common analysis and guidance on relevant countries of origin** aiming at increasing convergence in asylum decisions across the Union.*
- ***Increased operational and technical assistance to Member States, particularly those subject to disproportionate pressure, including through the establishment of the Asylum Reserve Pool of 500 experts** from Member States to allow for rapid deployment.*

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- ***Facilitate*** *and* ***encourage operational cooperation between Member States and third countries*** *in order to promote Union standards on asylum and assisting third countries as regards* ***expertise and capacity building for their own asylum and reception systems as well as implementing regional development and protection programmes and other actions****.*
- ***Deploy experts as liaison officers in third countries which will*** *establishing and maintaining* ***contacts with the competent authorities*** *of the third country with a view to* ***gathering information and contributing to the establishment of protection-sensitive migration management***
- *Support MS, in the framework of cooperation with third countries, in the implementation of the Union* ***Resettlement Framework*** *and* ***national resettlement schemes.***

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Proposal by COM – September 2018

- *Targeted amendment further enhancing operational support to MS, through* ***comprehensive support to MS (upon their request) in the administrative stage of the procedure for international protection and the Dublin procedure. Final decision always to be made by the MS.***
- ***Support to appeals*** *– legal analysis and research.*
- ***Alignment of the Regulation with the new ECBG regulation*** *– on cooperation on returns and deployment of Migration Management Support Teams.*
- ***Increase of budget for operations of EUR 55 million annually****.*

State of play :

- *First text with considerable strengthening of provisions and tasks of Agency already agreed provisionally by co-legislators*

- *New proposal for enhanced support under negotiation*

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Regulation establishing a Union Resettlement Framework Proposal

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Definition

"Resettlement"

Admission of third country nationals and stateless persons in need of international protection from a third country to which or within which they have been displaced in order to grant them international protection.

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Objectives

- ✓ *Establish **a permanent framework with common rules** on*
  - ➢ *the admission of third country nationals,*
  - ➢ *resettlement procedures,*
  - ➢ *the status granted to the resettled persons,*
  - ➢ *financial support to the resettling Member States.*

- ✓ *Provide for a **legal and safe arrival** of people in need of international protection, reducing the risk of dangerous irregular movements.*

- ✓ *Contribute to **global resettlement efforts.***

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State if play – ongoing negotiations

- *General agreement on the **common legal framework for the EU's resettlement efforts**, on the idea of having **two year resettlement plans** to be adopted by the Council based on COM proposal, associating the EP, and preceded by broad consultations of eg UNHCR*

- *It provides for a flexible framework built on **voluntary participation** and covering also **humanitarian admission and***

- *It also provides for **a harmonised resettlement procedure***