



Annual General Conference 2018
Belgrade, 7-9 November 2018

Workshop 5 - Reform of EU Asylum Law

Plenary room

Background paper

Objectives

The objectives of the workshop to discuss plans for ECRE advocacy on the implementation of the current asylum *acquis*, with a focus on the Dublin system, in light of recent developments in the CEAS reform, national practice and members' assessment thereof.

Format

These topics will be discussed through the lens of the practical experience of ECRE members in their national context and, where possible, to get a better understanding of emerging national policies and Member States' positions on the open legislative files. This will allow ECRE members to share their assessment of the prospective changes to the institutional context of the CEAS, as well as develop ideas for advocacy on current issues in the implementation of the *acquis*.

The workshop will be facilitated by Morten Kjaerum, Chair of the ECRE Board.

Structure

Following the short overview of the state of play, the discussion will be structured around selected issues in the implementation of the *acquis*: the application of the Dublin system, particularly in view of bilateral agreements and *ad hoc* distribution arrangements in 2018, and the human rights risks attached to stronger efforts from states to push for more transfers.

Agenda

- 14:00 Introduction
[Morten Kjaerum, ECRE](#)
- 14:10 Update on CEAS reform package, and latest proposals on EU Asylum Agency Regulation, European Border and Coast Guard Regulation, and Migration Statistics Regulation
[Minos Mouzourakis, ECRE](#)
- 14:30 Selected issues in the implementation of the Dublin system
- Administrative arrangements supporting and/or circumventing the Dublin system: the case of Germany's bilateral agreements
[Bernward Ostrop, Caritas Germany](#)
 - *Ad hoc* responsibility-sharing and impact on procedural guarantees: the case of disembarkation arrangements
 - "Push for transfers" and impact on procedural guarantees: the case of outgoing procedures in France and Italy
- 15:15 ECRE advocacy plans, opportunities at national level and members' involvement
Discussion
- 15:50 Conclusion and wrap up

Background Note

1. The institutional reform: the ‘surviving’ legislative proposals

Although political agreement had nearly been reached on the recast Reception Conditions Directive, the Qualification Regulation, the recast Eurodac Regulation and the Resettlement Regulation in June 2018, negotiations are stalled since the Austrian Presidency has not picked up the discussion with the European Parliament following the compromise submitted its predecessor. Discussions on the Asylum Procedures Regulation continue within Council, while the formal negotiations on the Dublin IV proposal have been replaced again with informal bilateral meetings to establish Member States’ positions on solidarity. Council has recently shifted its focus to policy discussions on disembarkation, while the European Commission tabled a new round of legislative proposals on 12 September 2018, consisting of a recast Return Directive, a new mandate for the European Border and Coast Guard, and an amended proposal on the EU Asylum Agency. Against this backdrop, and bearing in mind the European Parliament elections of May 2019, it seems unlikely the CEAS reform will ever be agreed.

The legislative proposals relating to asylum which are still discussion at the moment are:

a. European Union Agency on Asylum (EUAA) – Amended proposal

The amended four-article proposal – [COM\(2018\) 633](#) – aims to complement the provisional inter-institutional agreement between the Council and the European Parliament of 28 June 2017 on the previous proposal – [COM\(2016\) 271](#) – by further enhancing the EUAA’s powers to provide direct support to Member States in processing individual asylum applications.

The amended Article 16 enables the EUAA to identify applicants and register applications, as well as assist Member States with carrying out admissibility, substantive and Dublin interviews. In addition the Agency can assist with information provision to applicants and can be tasked with the carrying out or coordination of allocation or transfer under the Dublin system. A new Article 16a further details the EUAA’s role in assistance with the asylum and Dublin procedure and specifies the activities that may be undertaken by the members of the asylum support teams it deploys. These encompass all type of activities of national caseworkers at the first instance stage, including registration, assistance with lodging, conducting interviews as well as tracing of family members or carrying out take charge and take back procedures in the framework of the Dublin Regulation. The new provision also includes convoluted wording on EUAA-deployed experts’ powers to prepare the actual decisions, which remains the prerogative of the national authorities. Whereas experts from the asylum support teams are entitled to “prepare decisions on applications” they can also “provide those decisions to the competent national authorities” responsible for taking individual decisions. The intention is clearly to maintain final decisions with the national authorities, but the wording used is at least confusing as providing decisions to national authorities suggests that they would not even have to rubberstamp the assessment made by EUAA-deployed experts. The implications of such wording will need to be clarified.

If adopted, these provisions would resolve any uncertainties that still remain under the current EASO Regulation on whether current EASO involvement in national asylum procedures is within its mandate. At the same time, the very fact that the Commission considered it necessary to provide such a comprehensive legal basis for these activities in the EUAA Regulation is an indication that current EASO activities in countries such as Greece may indeed go beyond the Agency’s current mandate.

Actions:

- ❖ ECRE has shared an initial analysis of the amended proposal with members. Further discussions and guidance to the European Parliament will continue.

- ❖ ECRE is monitoring the current involvement of EASO in domestic asylum procedures in Greece, Italy and Cyprus, under a research project funded by the Dutch Council for Refugees. By the end of 2019, ECRE will have led missions to each of these countries and published findings.

b. Migration Statistics Regulation – New proposal

The proposal – [COM\(2018\) 307](#) – was published on 16 May 2018 and has been swiftly negotiated within the Council and the European Parliament. The Council reached an agreement on a mandate on 31 October 2018, while the European Parliament is now discussing amendments tabled on 12 October 2018 to the draft report published by Cecilia Wikström on 13 September 2018.

The reform appears as a ‘technical’ proposal but offers valuable opportunities to push for more thorough and systematic provision of asylum statistics, at a time when policymakers debate far-reaching proposals on refugee protection without a solid evidence base.

In its [Comments](#) on the proposal, ECRE has called for an expansion of the Migration Statistics Regulation to require Member States to collect and transmit more data to Eurostat. Additional areas include: detention, age assessment of unaccompanied children, disaggregation of rejection decisions by merit/inadmissibility, disaggregation of withdrawal decisions by cessation/ other grounds, reception.

Actions:

- ❖ ECRE is closely collaborating with the European Parliament to shape its report on the Migration Statistics Regulation reform in line with our recommendations. Guidance and advice will also be provided in the course of ‘trilogue’ negotiations. The draft report published by Cecilia Wikström on 13 September 2018 took into account all of our recommendations, while the S&D and Greens’ amendments added useful provisions in line with ECRE advice.
- ❖ ECRE has made contact with the Council (GSC, Austrian Presidency, Dutch Permanent Representation) and selected national administrations (Greek Asylum Service, Spanish Asylum Office, Belgian Aliens Office, Belgian Commissioner-General for Refugees) to assess their positions on the file. Since the Council rapidly agreed its position without debating the policy implications of the reform, positions are likely to be stated in the course of ‘trilogue’ negotiations with the Parliament.

2. Upholding the asylum *acquis*: the case of Dublin

In light of the likely failure of EU co-legislators to agree on the reform of the CEAS, the European Commission is reorienting Council and European Parliament focus towards new legislative reforms aimed at speeding up and increasing returns. Attention, however, should be placed (again) on building protective and sustainable asylum systems, in compliance with the legal standards currently in force.

ECRE has consistently stressed that the 2016 reform package was hastily launched without any solid evidence on the implementation of the second-generation Asylum Directives,¹ only adopted in 2013 and transposed very recently in some countries.²

Although the European Commission was required to report on the application of the recast Qualification Directive by June 2015 and the recast Reception Conditions Directive and recast Asylum

¹ Directive 2011/95/EU (recast Qualification Directive); Directive 2013/32/EU (recast Asylum Procedures Directive); Directive 2013/33/EU (recast Reception Conditions Directive).

² Belgium transposed the recast Asylum Procedures Directive and recast Reception Conditions Directive in March 2018; Greece transposed the recast Reception Conditions Directive in May 2018; Spain has not transposed any of the recast Directives so far.

Procedures Directive by July 2017,³ none of the implementation reports have been published or presented to the European Parliament or the Council to date.⁴ The lack of reporting on the recast Asylum Directives contrasts with the in-depth evaluation report published by the Commission on the implementation of the Dublin III Regulation.⁵

Implementation questions are particularly critical in the context of the Dublin system at the moment. The stalled negotiations on the Dublin IV proposals and the adverse political climate on migration have resulted in a range of unilateral or bilateral arrangements undermining, or subverting altogether, the safeguards set out in the Dublin III Regulation. These include:

- Germany's effort to speed up the removal of asylum seekers to other countries through bilateral agreements ("Administrative Arrangements") with Greece, Spain, Italy and Portugal in the summer of 2018. While the Germany-Portugal arrangement of September 2018 only appears to specify shorter time limits for the issuance and response to Dublin requests and the conduct of transfers, in line with Article 36 of the Dublin III Regulation, the Germany-Greece arrangement has resulted in asylum seekers (unlawfully) refused entry at the German land borders without being channelled into a Dublin procedure.
- *Ad hoc* regional arrangements for distribution of asylum seekers arriving by sea, following Italy's decision not to allow the disembarkation of search and rescue operations (e.g. "Aquarius") on its ports. Following several days of standoff, ships are allowed to disembark on Maltese or Spanish ports and people are distributed in different countries. In Malta, however, rescued persons are *de facto* detained in the Initial Reception Centre upon arrival and are not allowed to lodge an asylum application before being transferred to another country. According to practice so far, France deploys OFPRA officers to interview people in the Initial Reception Centre and agrees to relocate only those in need of protection. The entire process is carried out without guarantees or transparency, since it is not a formal Dublin procedure.
- General efforts on the part of several countries (e.g. Germany, France, Italy) to secure higher numbers of Dublin transfers. Numbers of actual transfers are indeed increasing, but at the expense of procedural safeguards. In Italy, for example, has set up a specific Dublin procedure in Friuli-Venezia Giulia, where asylum seekers are transferred to Austria or Slovenia without having had the opportunity to lodge their asylum application and to be interviewed. In France, Prefectures infringe the provisions of the recast Reception Conditions Directive insofar as they systematically order house arrest or detention against any person falling in a Dublin procedure, without an individualised assessment.

Actions:

- ❖ ECRE has advised MEPs to submit an oral question to the European Commission with a view to getting more information on the preparation and publication of the implementation reports on the Asylum Directives.
- ❖ Through AIDA, ECRE monitors the operation of the Dublin system, namely with collection of up-to-date statistics on requests and transfers where available and updates from practice. Through EDAL, ECRE monitors relevant case law from domestic and European courts interpreting the Dublin Regulation.

³ Article 38(1) recast Qualification Directive; Article 30 recast Reception Conditions Directive; Article 50 recast Asylum Procedures Directive.

⁴ Confidential reports on the evaluation of the recast Qualification Directive had been prepared by consultants ICF and Tipik in 2016, but were never made public.

⁵ European Commission, *Evaluation of the Implementation of the Dublin III Regulation*, DG Migration and Home Affairs, Final report, 18 March 2016, available at: <https://bit.ly/2s5obA1>.