



## **THE ASYLUM PACKAGE MAIN ACHIEVEMENTS**

- 1. THE PROCEDURES DIRECTIVE**
- 2. THE RECEPTION CONDITIONS DIRECTIVE**
- 3. DUBLIN REGULATION**
- 4. EURODAC**

### **1. THE PROCEDURES DIRECTIVE (APD)**

**In the first phase of the Common European Asylum System, the 2005 APD has been referred to as a catalogue of the worst national practices** for setting particularly low standards of protection and leaving a considerable margin of manoeuvre to Member States. Compared to the first-phase measure, **the revised Directive, taken as a whole, provides significant improvements.**

#### **Main achievements of the recast APD:**

- The principle of a **single determining authority**.
- **Personal interview** provided in all cases; **clear rules on conditions, content and reports**.
- **Better access to information** for asylum seekers and their lawyers.
- A limited form of **free legal assistance** at first instance and better conditions for access to free legal assistance and representation in appeals.
- **Increased legal certainty** (notably: deletion of derogations, reduction of the complexity of the system and the principle of single procedure for refugee and subsidiary protection status determination).
- **Clear rules on access to the asylum procedure**.
- Detailed **rules on training** of both the determining authority and other competent authorities.
- Specific **rules on medical examinations** obliging Member States to conduct such examinations if relevant.
- **Clear provisions on special needs**: identification of persons with such needs and taking them into account during the procedure.
- **Clear rules on time-limits to decide on asylum applications**.
- **Better rules on effective remedy** including a principle of automatic suspensive effect, subject to limited exceptions.
- An **exhaustive, limited list of grounds for the application of accelerated and border procedures**.

## 2. THE RECEPTION CONDITIONS DIRECTIVE (RCD)

The 2003 RCD created a patchwork of conditions that were extremely poorly transposed by the MSs. The resulting situation ranged from exemplary to downright appalling conditions and subjected the asylum seekers to very discriminatory situations. The **RCD recast provides a higher standard of protection, much clearer rules, lessens administrative burden and further harmonises the standards between the MSs.**

### Main achievements of the recast RCD:

- **Introduction, for the first time, of firm European rules on grounds and procedures** (including judicial review etc) **for detention of the asylum seeker.** This **ends the arbitrary and discriminatory regimes** of Member States of ordering detention, sometimes even by administrative measures.
- Making **detention a measure of last resort** and forcing MSs to first exhaust all **alternatives to detention.**
- Introduction of **European rules on detention conditions** (detention in specialised facilities and only in exceptional circumstances in prison facilities, but even then strictly separate from prisoners; unaccompanied minors shall never be detained in prison accommodation). Current RCD does not regulate detention conditions at all, hence conditions are often poor and prisons are widely used.
- **Introduction of clearer and more specific rules on provision of free legal assistance and representation** (ensured in particular when applicants seek review of a detention order).
- **Obligation for MSs to identify vulnerable persons, determine their special reception needs** and provide them with the specialised reception conditions/assistance they need. No such obligation under current rules
- Special safeguards for detained vulnerable people (specialised facilities, specialised staff, separate accommodation, special regimes and rights).
- **Clarified and extended rights to information** for the asylum seekers and information obligations to MSs.
- **Access to labour market within 9 months** following the date of the lodging of the asylum application (currently 1 year).
- Even in cases where material reception conditions are reduced or withdrawn (a list of 5 cases), **MSs may never withdraw access to health care or a dignified standard of living.** All decisions to withdraw or reduce reception conditions have to be made individually, objectively and impartially.
- Access to **health care explicitly includes essential treatment of serious mental disorders** and, where needed, appropriate mental health care. No such provision in current RCD.
- MSs must ensure that **persons who have been subject to torture, rape or other serious acts of violence receive the necessary treatment**, in particular access to appropriate medical and psychological treatment or care. Furthermore, those working with such persons must have had and continue to receive the appropriate training and be bound by confidentiality rules.

## 3. DUBLIN REGULATION

Originally, the Dublin system seeks to prevent multiple asylum applications, asylum shopping, and to avoid the phenomenon of "refugees in orbit". However, over the years, the system has proved to be inefficient, dysfunctional and unfair for both asylum seekers and MSs. Clearer rules were needed to determine which Member State is responsible for an asylum application in order to ensure that individuals have effective and fair access to the asylum procedures.

As set out by Commission, the initial objective of a second-phase Dublin Regulation is to satisfy three main objectives of improving the efficiency of the system, enhancing the level of protection for asylum seekers within it, and ensuring better solidarity among Member States, taking fully into account the principles established by the ECtHR and ECJ.

The revised Dublin rules show **significant improvements** over the current system, especially with regard to **access to information** for asylum seekers, the **right to appeal**, an **early warning mechanism** and **safeguards for vulnerable persons**.

#### **Main achievements of the recast Dublin Regulation:**

- **An early warning, preparedness and crisis management mechanism** to address the root causes of malfunctioning of national asylum systems or problems stemming from particular pressures before they develop into a fully-fledged crisis; also, to speedily and effectively address a crisis which is nevertheless unfolding. It **provides clear reference to solidarity with MSs under pressure and obligation to comply with fundamental rights**.
- Introduction of a **series of provisions on protection of applicants**, such as compulsory personal interview, guarantees for minors.
- Introduction of **possibility for appeals to be suspended**, together with the **guarantee of the right for a person to remain on the territory** pending the decision of a court or on the suspensive effect.
- Introduction of **obligation to ensure legal assistance** free of charge upon request, unless a court of tribunal decides that there are no tangible prospects of success.
- Introduction of a **single ground for detention** in case of risk of absconding, on the basis of objective rules to be detailed in national legislations; strict limitation of the duration of detention.
- Introduction of take back possibility for persons who have not lodged an application on the territory of the MS carrying out the Dublin procedure and who could otherwise be considered irregular migrants and be returned under the Return Directive.
- **Obligation to guarantee right to appeal against transfer decision** – in current legislation this is under a "may" clause.
- The **right to information has been expanded** from a general line on the obligation to inform the applicant on the application of the Regulation into a detailed provision, exhaustively laying down the content of this information, his/her rights, including on effective remedy and sovereignty clause.
- **More legal clarity of procedures between MSs** - e.g. exhaustive and clearer deadlines for take charge and take back, costs of transfers, exchange of relevant information, in particular health data before the transfer etc. The entire Dublin procedure cannot last longer than 11 months for take charge cases, or 9 months for take back cases (except for absconding or where the person is imprisoned). Under current rules, the take back request is not subject to a deadline which thus extends indefinitely this procedure.
- For **unaccompanied minors, extension of the possibility to reunite**, in addition to family, **with legally present siblings, aunt/uncles and grandparents** (the last two categories on the basis of individual examination of the capacity to take care of the minor). Under current provisions an UAM could be reunited with unspecified "relatives", "if possible" (thus discretionary possibility). The notion of "relatives" of an UAM is now clearly defined, avoiding conflicting interpretations and thus non-application.

#### **4. EURODAC**

Eurodac was primarily intended to facilitate the Dublin regulation as the finger print database of Dublin, however, in the new Commission proposal, law enforcement access to the database was also included.

Though initially opposed to access of law enforcement, our Group, as part of a package deal on the asylum files, accepted access of law enforcement to the database, if it would be coupled with substantial safeguards.

Eurodac is now effectively a 'dual purpose' instrument which primarily is to be used for asylum purposes but can, as a last resort, be accessed for law enforcement purposes.

Despite the certain negative aspects of the file, on the whole there are enough checks and balances in place to ensure that this access is only a last resort and cannot be arbitrarily used by MS law enforcement authorities or the Europol.

### **Main achievements of the recast Eurodac:**

- Eurodac is to be **used as a last resort** after other databases are first consulted.
- Law enforcement authorities are **never given a direct access to the Eurodac database**.
- Law enforcement authorities have to provide **adequate reasons to believe that a suspect is an asylum seeker**, before they can request a comparison.
- The system operates on a **hit/no hit** -basis.
- The **verifying authority** must be **independent**.
- Strong guarantees to ensure that **data from the Eurodac system is not given to third countries**. Inclusion of steps to ensure that any indirect transfer of information, where it would lead to persecution, is prohibited.
- The Commission has to carry out a review on Eurodac, in particular to address the issue of **stigmatisation** which may result from law enforcement access to Eurodac.
- Asylum seekers will be **fully informed** that **law enforcement** authorities may have **access** to their fingerprints and it will be done in a language that they understand.
- Privacy and **high levels of data protection** are taken into account in the text.

### **Conclusions**

Taken as a whole, the recast package would provide **substantial improvements compared to the current system of first-phase measures**. The **recast package** would create a clear added value and lead to **fairer, quicker, more consistent and better quality asylum decisions across the Union**. Rules are further specified and clarified and the procedural guarantees reinforced in order to ensure harmonised, fair and efficient procedures and systems. Also it is impossible to separate the files and endorse some and veto others, as it became crystal clear, through out the process, that the only way for the two co-legislators to agree was to negotiate the package as a whole - the Parliament was not so keen on Eurodac, but had to use it as a bargaining tool to make the Council agree on the rest.

The provisionally agreed **asylum package recast**:

- 1) ensures the **quality of the asylum procedures and conditions**,
- 2) guarantees the **respect of the rights of the asylum seekers**,
- 3) **increases the efficiency** of the overall decision-making process,
- 4) **further harmonises** the asylum decisions within the Union; and
- 5) **reinforces the monitoring** of the measures taken.

One can, of course, argue that many more improvements could have been made, but taking into account the extremely strong opposition of Council, one should welcome the successful balancing act pursued by Parliament. Overall, the negotiations with the Council were lengthy and extremely difficult and the EP had to give in on some of its original demands.

However, considering the current patchwork of badly implemented, or completely disregarded, asylum rules, the adoption of the recast asylum package is a massive improvement to the daily realities of the asylum seekers in Europe and goes far in achieving fairer and better quality asylum decisions.

The success or failure of the system will now be down to the MS transposition and application of the rules and the close monitoring role of the Commission and the EASO. Although more progress will be needed to establish a truly integrated European asylum system, these improvements should be greatly welcomed.

S&D Group Secretariat (13.05.2013)