

Guidance Note on the transposition and implementation of the EU Asylum *Acquis*

February 2014

1. Timeframes for the transposition of the recast EU asylum legislation

Directives: EU Directives lay down certain end results that must be achieved by Member States leaving it to national authorities as to how to adapt their laws to meet these goals. Directives may only be transposed in national law by means of national provisions of a binding nature which have the same legal force as those which must be amended.¹ Mere administrative practices cannot be regarded as the proper fulfillment of a State's obligation under the Treaty to transpose a Directive as such practices are alterable at will by the authorities and are not given the appropriate publicity.² National measures must guarantee the full application of the Directive in a sufficiently clear, transparent and precise manner so that, where the Directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts. The Court has also added a criterion of transparency to allow individuals to know the full extent of their rights and rely on them before the national Courts. During the transposition period Member States are obliged to refrain from taking any measures liable to seriously compromise the objective being achieved.³ Once the transposition phase is over, even after a Member State has implemented a Directive correctly into national law, an individual can continue to rely directly on the provisions of the Directive which appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise so long as it is not being properly applied in practice.⁴

Regulations: Regulations have direct effect and therefore have binding legal force on Member States as soon as they enter into force. The provisions of regulations have effect in the national legal systems of Member States without it being necessary for the national authorities to adopt measures of application.⁵ Sometimes there will be further EU supplementary measures such as Regulation No. 118/2014 on the implementing rules for Dublin III Regulation (recast) No. 604/2013.

¹ CJEU C-235/91 *Commission v Ireland* [1992] ECR p. I-5917 para 9-11.

² CJEU C-168/85 *Commission v Italy* [1986] ECR 2945, para.13.

³ CJEU C-41/11, *Inter-Environmental Wallonie ASBL and Terre Wallonne ASBL v Region Wallonne* [2012].

⁴ CJEU C-62/00 *Marks & Spencer plc. V Commissioners of Customs & Excise* [2002] para 22-28.

⁵ CJEU C-367/09, *Belgisch Interventie- en Restitutiebureau v SGS Belgium NV, Firme Derwa NV, Centraal Beheer Achmea NV*, [2010] paras. 32-33.

Qualification Directive (recast) 2011/95/EU:

- Publication in Official Journal of the European Union: 20 December 2011 – L 337/9
- Entry into force: 9 January 2012
- Transposition deadline for relevant provisions (Art. 39): **21 December 2013**
- Member States shall communicate to the Commission the text of the main provisions of national law covered by this Directive.
- The UK and Ireland have opted out of this Directive and Denmark is not bound by this Directive. The UK and Ireland continue to be bound by Directive 2004/83/EC.
- The Commission shall report to the European Parliament and the Council on the application of this Directive by **21 June 2015** and propose any amendments that are necessary. These proposals for amendment shall be made by way of priority in Articles 2 (Definitions) and 7 (Actors of Protection). Member States shall send the Commission all the information that is appropriate for drawing up the report by 21 December 2014. After presenting the report the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years (Art. 38).
- The 2004 Qualification Directive is repealed for the Member States bound by the 2011 recast Qualification Directive with effect from 21 December 2013 (Art.40).

Dublin III Regulation (recast) No. 604/2013:

- Publication in Official Journal of the European Union: 29 June 2013 – L 180/31
- Entry into force: 19 July 2013.
- Applicable to applications for international protection lodged as from **1 January 2014**.
- Applicable to any request to take charge or take back in the Dublin procedure as from **1 January 2014** (Art. 49 and Art. 41 on transitional measures).
- Norway, Iceland, Switzerland and Liechtenstein will also apply the Dublin III Regulation Recast.⁶
- The Commission shall report to the European Parliament and to the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments by **21 July 2016** (Art. 46). Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires. After having submitted that report, the Commission shall report to the European Parliament and to the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article 40 of Regulation (EU) No 603/2013.
- The 2003 Dublin Regulation and Articles 11(1), 13, 14 and 17 of the 2003 Implementing Regulation (Regulation (EC) No 1560/2003) are repealed (Art. 48).

Eurodac II Regulation (recast) No. 603/2013:

- Publication in Official Journal of the European Union: 29 June 2013 – L 180/1
- Entry into force: 19 July 2013.
- Applicable as from **20 July 2015** (Art. 46).
- UK has opted into this Regulation.
- Ireland has opted out of this Regulation and Denmark is not bound by this Regulation.

⁶ The Schengen Associated States of Norway, Iceland, Switzerland and Liechtenstein are part of the Dublin system.

- By **20 July 2018** and every four years thereafter, the Commission shall produce an overall evaluation of Eurodac, examining the results achieved against objectives and the impact on fundamental rights and shall make any necessary recommendations (Art. 40(4)). The Agency will submit to the European Parliament, the Council, the Commission and the European Data Protection Supervisor an annual report on the activities of the Central System, including on its technical functioning and security (Art. 40(1)).⁷
- The 2000 EUODAC Regulation (Regulation (EC) No 2725/2000) and the 2002 EUODAC Implementing Regulation (Regulation (EC) No 407/2002) are repealed with effect from 20 July 2015.

Commission Implementing Regulation No. 118/2014:

- Publication in the Official Journal of the European Union: 8 February 2014 – L 39/1
- Entry into force: **9 February 2014.**
- This Regulation provides supplementary rules for the effective application of Dublin III Regulation (recast) No. 604/2013.
- This Regulation is binding in its entirety and directly applicable in all EU Member States, Norway, Liechtenstein, Iceland and Switzerland.

Asylum Procedures Directive (recast) 2013/32/EU:

- Publication in Official Journal of the European Union: 29 June 2013 – L 180/60
- Entry into force: 19 July 2013.
- Transposition deadline for Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex 1: **20 July 2015.**
- Transposition deadline for Articles 31(3), (4) and (5) (time limit for concluding an examination procedure at first instance (6 – 21 months)): **20 July 2018.**
- Articles 47 (challenge by public authorities) and 48 (confidentiality principle with regard to information obtained by asylum authorities in the course of their work) shall apply from **21 July 2015.**
- The UK and Ireland have opted out of this Directive and Denmark is not bound by this Directive. The UK and Ireland continue to be bound by Directive 2005/85/EC.
- Transitional provisions: laws, regulations and administrative provisions transposing the recast Asylum Procedures Directive apply to asylum procedures started after 20 July 2015 or an earlier date. Applications lodged before 20 July 2015 and procedures for the withdrawal of refugee status before 20 July 2015 are governed by the laws, regulations and administrative provisions adopted pursuant to the 2005 Asylum Procedures Directive.
- The Commission shall report to the European Parliament and the Council on the application of this Directive by no later than **20 July 2017** and propose any amendments that are necessary. After presenting the report the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years (Art. 50).
- The 2005 Asylum Procedures Directive is repealed for the Member States bound by the 2013 recast Asylum Procedures Directive with effect from 21 July 2015.

Reception Conditions Directive (recast) 2013/33/EU:

- Publication in Official Journal of the European Union: 29 June 2013 – L 180/96

⁷ The Agency is the European Agency for the Operational Management of Large-Scale IT Systems in the area of Freedom, Security and Justice established by Regulation (EU) No. 1077/2011 of the European Parliament and of the Council.

- Entry into force: 19 July 2013.
- Transposition deadline for Articles 1 to 12, 14 to 28 and 30 and Annex I (Art. 31): **20 July 2015**.
- Articles 13 (Discretionary provision on medical screening) and 29 (obligatory provision on staff and resources) shall apply from **21 July 2015** (Art.33).
- The UK and Ireland have opted out of this Directive and Denmark is not bound by this Directive. The UK continues to be bound by Directive 2003/9/EC.
- The Commission shall report to the European Parliament and the Council on the application of this Directive by no later than **20 July 2017** and propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up the report by **20 July 2016**. After presenting the report the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years (Art. 30).
- The 2003 Reception Conditions Directive is repealed for the Member States bound by the 2013 recast Reception Conditions Directive with effect from 21 July 2015.

2. Monitoring the transposition and implementation of the recast EU asylum legislation

Member States are required to implement Directives in a manner which fully meets the requirements of clarity and legal certainty and provides for the *effect utile* of the Directive's objectives. In implementing the Directive, Member States must respect general principles of EU law including the principle of effectiveness and equivalence and national Courts must guarantee the primacy of EU law.⁸

It is national courts and administrative bodies that are primarily responsible for ensuring that the authorities of the Member States comply with European Union law. Therefore, if a person considers a particular measure (law, regulation or administrative action) or administrative practice to be incompatible with European Union law, he or she should seek redress from national administrative or judicial authorities (including national or regional ombudsmen) and/or through the arbitration and conciliation procedures available.

It is also important to note that the failure of Member States to confer the individual rights persons are entitled to under EU law and/or the absence of national actions to enforce the assertion of those rights at the national level, may mean that a State is liable for loss and damage caused to individuals as a result of breaches of EU law for which the State can be held responsible.⁹

As guardian of the Treaties, the European Commission oversees compliance of national legislation and practice with the EU asylum *acquis* and has the power to initiate infringement proceedings before the Court of Justice of the European Union if a Member State is failing to fulfill its obligations under EU asylum legislation. As regards access to effective remedies it is equally important to note that once the transposition deadlines have passed national Courts have the power to directly enforce EU law and therefore complainants should also be able to access remedies at the national level for failure to transpose the Directives correctly. It is important during the transposition phase

⁸ CJEU C-213/89 *The Queen v Secretary of State for Transport, ex parte Factortame Ltd & Others* [1990] E.C.R. I-2433.

⁹ CJEU C-6/90 and C-9/90 *Francovich et Al v Italian Republic* [1991] E.C.R. 1-5357.

to inform the ECRE Secretariat and your national contact point at the Commission about any potential problems in transposing and / or applying the relevant EU legislation.

Complaints about failures to respect provisions or principles of EU law can be submitted to the European Commission in the following ways:

1) By writing a letter to the following address:

European Commission
(Secretary-General)
B-1049 Bruxelles
BELGIUM

2) By sending an email to the following address: SG-PLAINTE@ec.europa.eu.

3) Or by filing a complaint through the Commission's representative office in your country.

In all cases the complaint may be lodged making use of the following form:

http://ec.europa.eu/eu_law/your_rights/your_rights_forms_en.htm.

It is very important for the complaint submissions to be complete and accurate, particularly as regards the facts complained of in relation to the Member State in question, any steps which have already been taken at any level and, as far as possible the provisions of European Union law which are allegedly infringed.

3. Information concerning infringement proceedings

According to Article 258 of the Treaty on the Functioning of the European Union If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the Commission may bring the matter before the Court of Justice of the European Union.

Non-compliance with an EU legislative obligation may involve either an act or omission on the part of the Member State. There are mainly two stages in the infringement proceedings. In a pre- litigation administrative or pilot phase, often after an informal dialogue with the Member State concerned the Commission may decide to send a letter of formal notice, in which the Commission requests the Member State concerned to submit its observations on an identified problem regarding the application of EU law within a given time limit.

If there is no reply or an unsatisfactory reply from the Member State, the Commission may decide to deliver a reasoned opinion. A reasoned opinion represents a more detailed analysis of the facts and concludes that in legal terms the Member State has violated its obligations under the Treaties or EU secondary law. Accordingly, the Member State is required to remedy the situation and end the infringement within a given time limit.

If the Member State does not comply with the reasoned opinion the Commission may bring the matter before the Court of Justice of the European Union (CJEU). Referral to the CJEU opens the second phase, the litigation procedure. On average it takes two years for the CJEU to rule on infringement cases brought by the Commission.

It should be noted that the Commission enjoys discretionary power in deciding whether or not it launches an infringement procedure and to refer a case to the Court. The key objective of the infringement procedure as described is to ensure compliance with EU law, which may or may not require a referral to the CJEU. As regards current infringements in the area of Home Affairs, information is available on this website: http://ec.europa.eu/dgs/home-affairs/what-is-new/eu-law-and-monitoring/index_en.htm