

Policy paper: the recast of the EU legislation on asylum January 2011

ILGA-Europe's key demands

- *The recast of the "Qualification Directive" and of the "Procedure Directive" should be the opportunity to enhance protection standards offered to people persecuted on the ground of their sexual orientation and gender identity;*
- *The definition of the asylum seeker's "family members" should be improved to clearly include same-sex partners;*

- *A new European agency, the European Asylum Support Office, is about to be established. Its role in terms of dissemination of good practices and training of national asylum officers can be of significant importance in the future, and LGBT organisations should be prepared to have an input.*

What can ILGA-Europe and its members do?

ILGA-Europe is monitoring this recast process, and provides its input to improve the existing legislation. We are in a position to engage in a dialogue with the European institutions during the whole recast process. Another of our inputs is to bring to our members a better comprehension of the European standards.

ILGA-Europe will regularly communicate with its membership at national level. Lobbying and advocacy targeting national governments are also very important, and national LGBT organisations have a role to play.

Following the entry into force of the Lisbon Treaty, the recast directives and regulations will be adopted under the co-decision procedure, which is a reinforcement of the European Parliament's role. However, the Council still has to adopt all the new legislative proposals by a qualified majority, and the debates are expected to be highly controversial.

This policy paper describes the current EU legislation recast process. It explains ILGA-Europe's proposals and positions.

Background information:

Under the EU asylum legislation and the "Qualification Directive" 2004/83/EC adopted in 2004¹, persons persecuted because of their sexual orientation can lodge

¹ Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

a claim for asylum in the European Union. The directive does not include specific references to persecution on the ground of gender identity, but includes a provision for “gender related aspects” to be taken into consideration.

The EU asylum legislation includes a number of other directives and regulations, although none of them have a specific impact on LGBT asylum seekers. All these texts are the grounds of the minimal standards that should be implemented everywhere in the European Union, even if national legislation can provide a higher level of protection.

In 2007 and 2009, the European Commission published a number of legislative proposals aiming at a full recast of the existing legislation, and at the creation of a Common European Asylum System (CEAS).

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1. Main issues at stake

The European Pact on Immigration and Asylum adopted by the European Council on 16 October 2008 calls on the EU to adopt “*in 2012 at the latest*”² new measures establishing a single asylum procedure comprising common guarantees and creating a uniform status for refugees and the beneficiaries of subsidiary protection. The Council observed that considerable disparities remained between the Member States, and stated that the Common European Asylum System should offer a “higher degree of protection”.

However, it is not clear how far such a harmonisation process will go. From 2008 on, no agreement has been reached between Member States on the recast of the existing regulations and directives. The European NGOs, and in particular the NGO Platform on EU Asylum and Migration Policy, are carefully monitoring this slow legislative process.

a) The recast of “Qualification Directive”

The “Qualification Directive” defines minimum standards for the qualification of asylum seekers as persons in needs of international protection (refugees or beneficiaries of subsidiary international protection). The directive is legally binding in all EU Member States, except Denmark. For this reason, the explicit inclusion of sexual orientation and gender identity in the reasons for persecution listed in this instrument has been an objective promoted by ILGA-Europe at the time of its adoption, in 2004.

Following the adoption of the directive, ILGA-Europe published [guidelines](#) to monitor the transposition and to assess if national legislation met the European standards. The transposition of this directive by the Member States was due to be completed by 10 October 2006.

The European Commission has published its recast proposal on 21 October 2009. ILGA-Europe has identified the following important issues to be raised during the legislative process.

➤ *Reasons for persecution: sexual orientation*

² According to the 2008 European Pact on Immigration and Asylum.

Article 10 of the current directive (“reasons for persecution”) reads as follows:

“Member States shall take the following elements into account when assessing the reasons for persecution:

[...]

(d) a group shall be considered to form a particular social group where in particular:

- ***members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and***
- ***that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;***

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States; Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;”

Member States thus had to include in their national legislation the possibility for refugee status to be awarded in respect of persecution based on sexual orientation.

The European Commission’s proposal for a recast directive does not change the language used about sexual orientation.

ILGA-Europe’s position

ILGA-Europe will discuss with relevant stakeholders the possibility of strengthening this language as follows:

“Depending on the circumstances in the country of origin, a particular social group **shall** include a group based on a common characteristic of sexual orientation.”

In addition, ILGA-Europe considers that the following sentence should be deleted:

“Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States”

This language is unnecessary, since the concept of sexual orientation is clearly defined in European treaties and EU law, and thus also recognised in national law.

Developments such as the amendments to “law on the protection of minors” and to the penal code recently discussed in Lithuania suggest that this language could even be harmful if combined with certain discriminatory provisions adopted at national level (in such a context, it might be used against a claim lodged by a LGBT people and/or activist).

➤ *Reasons for persecution: gender identity*

The same article is relevant when it comes to claims lodged by persons persecuted on the ground of their gender identity:

“Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article”

In 2004, ILGA-Europe had proposed a specific reference to persecution based on gender identity, but this was not included in the final text of the directive. The European Commission’s proposal for a draft directive tends to improve the language, since the new redaction of the above mentioned sentence would read as follows:

“Gender related aspects should be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group”

The obligation seems to be stronger. The concept of “gender related aspects” can clearly be interpreted as broader than the asylum seeker’s sex. The new redaction suggests a stronger obligation for Member States to take that reason for persecution in consideration.

ILGA-Europe’s position

While supportive of this new redaction, ILGA-Europe means to raise the issue of a more explicit language when it comes to gender identity. In order to achieve this objective, both Article 10 and Recital 29 of the European Commission’s proposal can be made more explicit:

*Article 10: “~~Gender related aspects~~ **Aspects related to gender and/or gender identity** should be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group”*

*Recital 29: It is equally necessary to introduce a common concept of the persecution ground “membership of a particular social group”. For the purposes of defining a particular social group, issues arising from an applicant's gender **and/or gender identity** should be given due consideration.*

The ground of “gender identity” has been mentioned by the Committee of Ministers of the Council of Europe in its Recommendation Rec(2010)5E of 31 March 2010 to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity³. The recommendation includes a section X calling on States to “recognise the well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum”. The Parliamentary Assembly of the Council of Europe (PACE) also adopted, on 29 April 2010, a Resolution 1728 (2010) on Discrimination on the basis of sexual orientation and gender identity⁴, which explicitly calls on Member States to “recognise persecution of LGBT persons as a ground for granting asylum and implement the 2008 Guidance Note on refugee claims relating to sexual orientation and gender identity of the Office of the United Nations High Commissioner for Refugees⁵”.

The concept of gender identity has been defined in various documents issued by Council of Europe and EU bodies, including the recently adopted Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People⁶.

In addition, all EU Member States supported the Statement on Human Rights, Sexual Orientation and Gender Identity presented to the United Nations General Assembly on 18 December 2008.

➤ *Contents of international protection: vulnerable persons*

³ <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

⁴ <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1728.htm>

⁵ <http://www.unhcr.org/refworld/pdfid/48abd5660.pdf>

⁶ <http://www.consilium.europa.eu/uedocs/cmsUpload/st11179.en10.pdf>

Article 20 of the current directive defines the general rules that apply to the contents of international protection, and reads as follows:

1. ***This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.***
2. ***This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.***
3. ***When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.***
4. ***Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.***

The definition of vulnerable persons is open. The only change proposed in the European Commission's draft for a recast directive is the mention of "**victims of trafficking**" and "**persons with mental health problem**" among the enumerated list.

The contents of international protection, described in Articles 21 to 34 of the current directive, include protection from refoulement, information, maintaining family unity, residence permits, the issuing of residence permits and travel documents, access to employment, access to education, health care, the situation of unaccompanied minors, access to accommodation, freedom of movement within the Member States, and access to integration facilities.

ILGA-Europe's position

Due to the nature of the acts of persecution suffered by many LGBT asylum seekers, and to the level of discrimination they may face during the time their application is examined, ILGA-Europe believes that they should, when needed, be considered as vulnerable persons in the sense of paragraph 3 of the above mentioned article. The fact that the definition provided by the above mentioned paragraph is an open one can be considered as satisfactory.

- *Definition of the family members*

Article 2 of the directive provides the definition of the “family members” who are taken into consideration in the implementation of the contents of international protection, including the rules on maintaining family unity (Article 23). The current definition reads as follows:

(h) “family members” means, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of refugee or subsidiary protection status who are present in the same Member State in relation to the application for international protection:

- ***the spouse of the beneficiary of refugee or subsidiary protection status or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens***
- ***the minor children of the couple referred to in the first indent or of the beneficiary of refugee or subsidiary protection status, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;***

The European Commission’s proposal for a recast directive broadens the definition, to include in its scope the married minor children of the couples referred to in the first indent or of the beneficiary of international protection, the father, mother or another adult relative responsible for the beneficiary of international protection, and the minor unmarried siblings of the beneficiary of international protection. The changes proposed by the Commission are focused on the best interests of the child, as it is made explicit in the new proposed Recital 18:

(18) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to best interests of the child.

As regards LGBT families, the Commission’s proposal brings no significant change. In particular, the current language makes clear that an unmarried partner should be considered as a “family member”, but only where the legislation of the Member State examining the application treats unmarried couples in a way comparable to married couples, and where this comparable treatment occurs in areas of law related to non-nationals.

This definition of family members in Article 2 has room for improvement. ILGA-Europe considers that the first indent of the current paragraph (h) of Article 2 could be rephrased as follows.

ILGA-Europe's position

~~- the spouse of the beneficiary of refugee or subsidiary protection status or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens,~~

Such a proposal will not be easily accepted by the States that do not provide any recognition of unmarried couples in national law. However, there now is a majority of EU States providing a form of recognition to same-sex couples. On 1st July 2010, 5 Member States out of 27 provided marriage equality, and another 11 Member States provided another form of recognition to same-sex couples (civil partnerships). Other Member States were about to introduce new legislation.

ILGA-Europe thus considers that it is time to raise the issue in the frame of the current recast. ILGA-Europe also considers necessary to take in consideration the recent decisions of the ECtHR (*Kozak v. Poland* on 2nd March 2010, and *Schalk and Kopf v. Austria* on 24 June 2010). In these decisions, the Court said that the State needs to take into consideration the Convention rights of sexual minorities, as well as developments in society including the fact that there is not just one way of leading one's private life. As a consequence, the Court does not accept that a blanket exclusion of persons living in a homosexual relationship from certain rights.

In *Schalk and Kopf v. Austria*, for the first time, the ECtHR referred to same-sex unions as families for the purpose of Article 8 (right for respect for private and family life) of the European Convention of Human Rights, saying that "a cohabiting same-sex couple living in a stable partnership, fell within the notion of 'family life'."

➤ *Other issues at stake in the recast process*

The other changes proposed by the European Commission for the recast of the directive have no specific impact on LGBT asylum seekers, but some of them can be considered as an improvement for all asylum seekers:

- the Commission proposes to adopt a better definition of the “actors of protection” in the country of origin, as well as a strict definition of the concept of “internal protection”;
- the Commission considers it necessary to remove a number of limitations of the rights of beneficiaries of subsidiary protection, thus reducing the gap between this status and the refugee status;
- the Commission proposes to enhance some of the rights formally granted to beneficiaries of protection, in order to help them face their integration challenges.

Generally speaking, the Commission’s proposals tend to improve the current directive. However, the discussion is likely to be tough between Member States, and its outcome can be described as unpredictable.

b) The “Procedure Directive” 2005/85/CE

Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status was adopted on 1st December 2005. The negotiation on the Procedure Directive and the Qualification Directive initially appeared to be part of the same package, even though the negotiation process is likely to be further delayed in the case of the Procedure Directive.

[Read a summary on the Directive’s contents \(European Union’s website\)](#)

In its current version, the “Procedure Directive” did not include any provisions as regards vulnerable groups of asylum seekers or asylum seekers with special needs (except in its article 17 on guarantees for unaccompanied minors).

The Commission’s proposal, published on 21 October 2009, would considerably improve the existing directive, as it clearly introduces these concepts. However, it does not take into consideration the special needs of many LGBT asylum seekers who face a number of huge cultural and linguistic obstacles during the asylum procedure, and who may have been victims of serious forms of psychological, physical or sexual violence. ILGA-Europe has identified the following important issues to be raised during the legislative process.

➤ *An inclusive definition of “applicants with special needs”*

By introducing such a definition, the recast proposal of the Commission already improves the text, with recitals 20 to 23 and article 2 (d) providing broader definitions of “applicants with special needs”:

Article 2 (d): ““Applicant with special needs” means an applicant who due to age, gender, disability, mental health problems or consequences of torture, rape or other serious forms of psychological, physical or sexual violence is in need of special guarantees in order to benefit from the rights and comply with the obligations in accordance with this Directive;”

According to the new article 20 proposed by the Commission:

“1. Member States shall take appropriate measures to ensure that applicants with special needs are given the opportunity to present the elements of an application as completely as possible and with all available evidence. Where needed, they shall be granted time extensions to enable them to submit evidence or take other necessary steps in the procedure.”

However, ILGA-Europe believes that a clear reference should be made to applications relating to persecution on the ground of sexual orientation and gender identity, for the following reasons:

- The definition proposed by the Commission is not an open definition. It provides a closed list of cases where asylum seekers can be considered as “applicants with special needs”.
- However, once this closed list of cases is established, it is clear in the definition proposed by the Commission that only those asylum seekers who are “*in need of special guarantees*”, “*due to*” the cases mentioned in article 2 (d), are actually considered as “applicants with special needs”.
- Finally, it is important to note that the definition of “applicants with special needs” included in the Reception Condition Directive, as proposed by the Commission and slightly amended by the European Parliament in 2009, is a different, open definition. In this directive, the cases listed are only the cases when applicants should always be considered as applicants with special needs.

ILGA-Europe’s position

For the above mentioned reasons, ILGA-Europe believes that the necessary consistency of the different EU directives is not an obstacle to the introduction in article 2 (d) of other cases where asylum seekers can be considered as “applicants with special needs”.

Due to the nature of the acts of persecution suffered by many LGBT asylum seekers, to the cultural context they often come from, and to the level of discrimination they may face during the time their application is examined, ILGA-Europe believes that they should, when needed, be considered as persons with special needs.

*Article 2 (d): "applicant with special needs" means an applicant who due to age, gender, **sexual orientation, gender identity**, disability, mental health problems or consequences of torture, rape or other serious forms of psychological, physical or sexual violence is in need of special guarantees in order to benefit from the rights and comply with the obligations in accordance with this Directive;*

ILGA-Europe also considers that a new Recital should be added between Recital 22 and Recital 23 of the Commission Proposals, to ensure that the special needs of many LGBT asylum seekers will be taken into consideration, and referring to the [UNHCR's Guidance note on refugee claims related to sexual orientation and gender identity](#) of 2008:

New Recital: “With a view to ensuring fair and adequate procedures, and in line with the UNHCR Guidance Note on refugee claims related to sexual orientation and gender identity of 2008, special needs arising from past experiences in cases involving sexual orientation or gender identity based persecution should be taken into consideration. The responsible authorities should ensure that personal interviews and examination procedures are organised accordingly. The complexity of sexual orientation and gender identity related claims should be properly taken into account in procedures based on the safe third country concept, the safe country of origin concept or the notion of subsequent applications.”

In addition, it is well established that many LGBT asylum seekers do not always know that sexual orientation can constitute a basis for refugee status. As a result, they can at first be reluctant to talk about intimate matters, particularly when their sexual orientation or gender identity is a cause of shame in the country of origin. Because of this initial lack of confidence, the [UNHCR's Guidance note on refugee claims related to sexual orientation and gender identity](#) established that “even where the initial submission for asylum contains false statements, or where the application is not submitted until

some time has passed after the arrival to the country of asylum, the applicant can still be able to establish a credible claim.”

➤ *Training programmes for the personnel examining the applications*

The Commission has added a new paragraph to article 4 of the directive, in order to better define the training programmes that Member States should provide to the personnel examining the applications. This new paragraph rightly mentions some cases of “special needs”:

Article 4 (2): The training referred to in paragraph 1 shall include, in particular:

[...]

(b) gender, trauma and age awareness;

ILGA-Europe’s position

ILGA-Europe believes that the training programmes should include all the cases where asylum seekers can be considered as “applicants with special needs”. As a result, we propose the following amendment:

Article 4 (2): The training referred to in paragraph 1 shall include, in particular:

[...]

(b) applicants with special needs, as defined by article 2 (d);

➤ *Disclosure of particular circumstances of a person to members of his/her family*

The Commission proposes to add a new paragraph 4 to article 10 of the directive, in order to list cases where Member States should not take one single decision covering all dependants (in the case of an application made by an applicant on behalf of his/her dependants).

Article 10 (4): Paragraph 3 shall not apply to cases where disclosure of particular circumstances of a person to members of his/her family can jeopardize the interests of that person, including cases involving gender and/or age based persecution. In such cases, a separate decision shall be issued to the person concerned.

ILGA-Europe’s position

ILGA-Europe believes that this proposal is welcome. However, and for obvious reasons, LGBT asylum seekers can be of those dependant applicants put at risk in case of disclosure of their sexual orientation or gender identity. As a result, we propose the following amendment:

*Article 10 (4): Paragraph 3 shall not apply to cases where disclosure of particular circumstances of a person to members of his/her family can jeopardize the interests of that person, including cases involving gender, **sexual orientation, gender identity** and/or age based persecution. In such cases, a separate decision shall be issued to the person concerned.*

➤ *Competence of the person conducting the personal interview*

The Commission proposes a modification of article 14 (3) a of the directive, in order to specify cases where there is a need to take into consideration the personal or general circumstances of an asylum application, to choose the person in charge of conducting the personal interview.

*Article 14 (3): (a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin, **gender**, or vulnerability; ~~insofar as it is possible to do so; and~~*

ILGA-Europe's position

ILGA-Europe believes that this proposal is welcome. However, the practice of various national authorities (Belgium, Sweden, the Netherlands, UK) has given evidence that the competence of the person conducting the interview as regards the specificity of LGBT-related applications is particularly important. As a result, we propose the following amendment:

*Article 14 (3): (a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin, **gender, sexual orientation, gender identity** or vulnerability; ~~insofar as it is possible to do so; and~~*

c) *The other EU asylum directives and regulations*

All the other pieces of EU asylum legislation are also undergoing a recast process. They don't have a direct impact on the possibility offered to LGBT people at risk of persecution to seek asylum in the EU. However, some of them include provisions on the definition of "family members" and of vulnerable applicants with special needs. ILGA-Europe believes that the different instruments should be as consistent as possible.

The dominant impression among NGOs is that the adoption of the new directives and regulations could be quite slow, since there is no agreement at this stage among Member States.

➤ *The "Dublin II Regulation" n° 343/2003*

Regulation N° 343/2003 on establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person was adopted on 18 February 2003. The European Commission issued a recast proposal on 3 December 2008, and the European Parliament adopted its first reading report on 7 May 2009.

The "Dublin II regulation" also applies to Norway and Iceland (Schengen area). An association agreement has also come into force with Switzerland in 2008. As a consequence, this is also valid as regards the Eurodac regulation.

[Read a summary on the Regulation's contents \(European Union's website\)](#)

In its current version, the "Dublin II Regulation" includes a definition of the "family members" of asylum seekers in its article 2 (i). The definition of the spouse or partner is consistent with the definition provided by the "Qualification Directive".

ILGA-Europe's position

The definition of the family members could be improved. The relevant indent should be rephrased according to the ILGA-Europe's proposal on the "Qualification Directive".

➤ *The "Reception Directive" 2003/9/EC*

Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers was adopted on 27 January 2003. The European

Commission issued a recast proposal on 3 December 2008, and the European Parliament adopted its first reading report on 7 May 2009. The negotiation on the Reception Directive and the Dublin Regulation appear to be part of the same package.

[Read a summary on the Directive's contents \(European Union's website\)](#)

In its current version, the "Reception Directive" includes a definition of the "family members" of asylum seekers in its article 2 (d). The definition of the spouse or partner is consistent with the definition provided by the "Qualification Directive".

ILGA-Europe's position

The definition of the family members could be improved. The relevant indent should be rephrased according to the ILGA-Europe's proposal on the "Qualification Directive".

The "Reception Directive" also includes a chapter on "Provisions for persons with special needs". In particular, its article 17 provides a definition of "vulnerable persons", which is consistent with the definition provided by the "Qualification Directive".

In its recast proposal, the European Commission proposed a new paragraph 2 to this article (which becomes Article 21 of the recast proposal). This paragraph reads as follows:

"2. Member States should establish procedures in national legislation with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such needs. Member States shall ensure support for persons with special needs throughout the asylum procedure and shall provide for appropriate monitoring of their situation".

ILGA-Europe's position

Due to the nature of the acts of persecution suffered by many LGBT asylum seekers, and to the level of discrimination they may face during the time their application is examined, ILGA-Europe believes that they should often be considered as vulnerable persons. ILGA-Europe considers this new redaction as an improvement of the legislation, which would help making clear that

asylum authorities have to develop appropriate procedures and guidelines as regards vulnerable asylum seekers.

ILGA-Europe does not propose a modification of this article of the Reception Directive. The definition it provides, in the version proposed by the Commission and slightly amended by the European Parliament in 2009, is an open definition, where the cases listed are those where applicants should always be considered as applicants with special needs.

Our position is consistent with our proposal to amend the text of the Procedure Directive, which provides a different, close definition of “applicants with special needs”, in which only those asylum seekers who are “*in need of special guarantees*”, “*due to*” the cases explicitly mentioned in article 2 (d), would actually be considered as having special needs.

➤ *The EURODAC regulation n°2725/2000*

The European Commission’s proposal for the recast of Regulation N° 2725/2000 on the EURODAC system for the comparison of fingerprints of third-country national or stateless applicants has also been published on 3 December 2008. The European Parliament adopted its first reading report on 7 May 2009.

[Read a summary on the Regulation’s contents \(European Union’s website\)](#)

d) *The establishment of the European Asylum Support Office (EASO)*

The establishment of the European Asylum Support Office (EASO) will be the result of the adoption of a new regulation by the European Parliament and the Council. This regulation is a completely new piece of legislation introduced in the frame of the current recast. It is also the only instrument that is likely to be adopted soon⁷.

➤ *A number of important missions*

According to the European Commission’s proposal, the mission of the EASO is to “*help to improve the implementation of the Common European Asylum System and to strengthen practical cooperation among Member States on asylum.*” The EASO will have no direct role in decision making or in

⁷ See section 3 of this document on the calendar of the legislative processes.

examining the applications of individual asylum seekers. However, Section 1 of the proposed regulation gives it a number of tasks in the field of “*supporting practical cooperation on asylum*”:

- **“The Office shall organise, promote and coordinate all activities enabling the exchanging of information and the identifying and pooling of good practice in asylum matters between the Member States” (Article 3);**
- **“The Office shall organise, promote and coordinate activities relating to information on countries of origin” (Article 4).**

Article 4 also mentions that the EASO should “use of all relevant sources of information, including governmental and non-governmental organisations”;

- **The Office “shall coordinate exchanges of information and all other activities related to the implementation of instruments and mechanisms for the intra-Community transfer, on a voluntary basis, of persons accorded international protection in the European Union” (Article 5);**
- **“The Office shall establish and develop training for members of all national administrations and courts, and national services responsible for asylum matters in the Member States” (Article 6).**

Article 6 specifically tasks the EASO with the development of a European asylum curriculum, and of training activities on general, specific or thematic issues, including applications from minors and vulnerable persons with specific needs, identification of the signs and symptoms of torture, interview techniques, the use of expert medical and legal reports, issues relating to the production and use of information on countries of origin, and specific legal and case-law issues.

The Stockholm Programme on the area of freedom, security and justice, adopted by the European Council in December 2009, confirms the importance given to the EASO, and highlights the fact that it “*should further develop a common educational platform for national asylum officials*”.

ILGA-Europe notes that the role of the EASO is likely to become of crucial importance, since it appears that the improvement of the examination of applications made by LGBT asylum seekers is closely linked to the development of guidelines grounded on good practices. The development

and reinforcement of adapted training programmes for asylum officers is particularly relevant.

➤ *How will the EASO start working?*

According to Recital 17 of the European Commission's proposal, the EASO should cooperate with other community bodies, "*in particular with [...] the European Union Agency for Fundamental Rights (FRA)*". ILGA-Europe believes that such cooperation can be very positive, and hopes it will be developed consistently.

The amendments of the European Parliament's to the Commission's proposal tend to reinforce the cooperation between the EASO and the UNHCR, which ILGA-Europe also considers as most useful⁸.

Another issue at stake is the cooperation between the EASO and the civil society. While the Management Board of the Office will be composed of representatives of the Member State and of the Commission, Article 32 of the European Commission's proposal also mentions a Consultative Forum. This body is designed to enable the EASO to "*cooperate closely with NGOs and civil society institutions operating in the field of asylum policy at national, European or international level.*"

The report adopted by the European Parliament backs the Commission's proposal. It appears that the role given to this Consultative Forum has been to some extent controversial among Member States. However, in its common position of 25 February 2010, the Council retained the Commission's proposal, and "*accepts the Parliament's amendments concerning the role of civil society in the Office, in particular by specifying that representatives of civil society are involved in developing training and may be invited in working parties.*"

The EASO regulation has been adopted on 19 May 2010, and the Office may be established by the beginning of 2011.

⁸ The UNHCR has published, in November 2008, a Guidance note on refugee claims relating to sexual orientation and gender identity.

2. An annual debate in the European institutions: what input from the NGOs?

In the frame of the 2008 European Pact on Immigration and asylum, the Member States have *“to hold an annual debate on immigration and asylum policies. To that end, [the Council] invites the Commission to present a report to the Council each year, based on Member States’ contributions and accompanied, as necessary, by proposals for recommendations, on the implementation, by both the Union and its Member States, of this Pact and of the programme that will follow on from the Hague programme (i.e. the Stockholm Programme adopted in December 2009). This annual debate will also enable the European Council to be kept informed of the most significant developments planned by each Member State in conducting its immigration and asylum policy.”*

On 10 June 2009, the European Commission published a Communication on a tracking method for monitoring the implementation of the European Pact on Immigration and Asylum ([COM\(2009\)266](#)). This Communication includes a description of the steps and the processes involved in the preparation of the annual reports and the organisation of the annual debate.

Remarks by ILGA-Europe

The Commission’s communication defines in particular the calendar for the national submissions that the Member States have to provide as an input. Being aware of this process can be of interest, especially when national LGBT organisations have contacts with their national authorities.

To identify the national bodies in charge of submitting information to the European Commission to prepare the annual report and the annual debate, it may be useful to identify the National Contact Point of the European Migration Network (EMN, established by [Council Decision 2008/381/EC](#)). The [EMN’s website](#) will help you to do so. It is not clear how much the input provided by the EMN’s members will impact the final report, but, depending on the national context, it can be worth engaging with them.

In addition, the Member States are asked to provide the Commission with a short report made of political and factual information. The structure of this report is available in the Commission’s 2009 Communication. No public consultation has been mentioned.

Indicative timetable for the annual report and debate (on the basis of the Commission's timetable for 2010)				
November: Member States to provide their contribution	January: update of national contributions (if necessary)	April: Presentation of the annual	April to June: Preparatory discussions in the Council	June: annual debate at the European Council <u>For 2010:</u> *See the report by the Commission COM(2010)214 *See the Council's conclusions (3 June 2010)

3. Calendar: the legislative recast process

Existing legislative instrument	Revision process	Relevant information for lobbying (EP Committee, rapporteur)
<p>“Dublin II regulation”</p> <p><i>Council Regulation n°343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the MS responsible for examining an asylum application lodged in one of the MS by a third-country national</i></p>	<p>*Proposal by the Commission, COM(2008)0820, 3 December 2008</p> <p>*First reading in the European Parliament, adopted report (7 May 2009)</p> <p>*Next steps: common position of the Council. *Possibly: second reading in Parliament, second common position of the Council, conciliation</p> <p>PROCEDURE FILE</p>	<p>*Committee on civil liberties, justice and home affairs, Jeanine Hennis-Plasschaert MEP (ALDE)</p>
<p>“Reception Directive”</p> <p><i>Council directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers</i></p>	<p>*Proposal by the Commission COM(2008)0815, 3 December 2008</p> <p>*First reading in the European Parliament, 7 May 2009: adopted report</p> <p>*Next steps: common position of the Council.</p> <p>*Possibly: second reading in Parliament, second common position of the Council, conciliation</p> <p>PROCEDURE FILE</p>	<p>*Committee LIBE, Antonio Masip Hidalgo MEP (S&D)</p>

<p>“Qualification Directive”</p> <p><i>Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted</i></p>	<p><u>Position of the UNHCR</u></p> <p>*Proposal by the Commission <u>COM(2009)551</u>, 21 October 2009</p> <p>*Next steps: first reading in Parliament; common position of the Council</p> <p>*Possibly: second reading in Parliament, second common position of the Council, conciliation</p> <p><u>PROCEDURE FILE</u></p>	<p>*Committee on civil liberties, justice and home affairs, Jean Lambert MEP (Greens/ALE)</p>
<p>“Procedure Directive”</p> <p><i>Council directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status</i></p>	<p>*Proposal by the Commission <u>COM(2009)0165</u>, 21 October 2009</p> <p>*Next steps: first reading in Parliament; common position of the Council</p> <p>*Possibly: second reading in Parliament, second common position of the Council, conciliation</p> <p><u>PROCEDURE FILE</u></p>	<p>*Committee on civil liberties, justice and home affairs, Sylvie Guillaume (S&D)</p>
<p>EASO</p> <p><i>Proposal for a regulation establishing a European Asylum Support Office</i></p>	<p>*Proposal by the Commission <u>COM(2009)0066</u>, 18 February 2009</p> <p>*First reading in the Parliament, <u>report adopted</u> on 7 May 2009</p> <p>*<u>Common position of the Council</u> on 25 February 2010</p> <p>*Communication of the Commission on the position</p>	<p>*Committee on civil liberties, justice and home affairs, Jean Lambert MEP (Greens/ALE)</p>

	<p>of the Council COM(2010)0079 of 5 March 2010</p> <p>* Adopted Regulation (EU) 439/2010 of 19 May 2010 establishing a European Asylum Support Office</p> <p>PROCEDURE FILE</p> <p>Position of the UNHCR</p>	
<p><i>Regulation n°2725 of 2000 on the EURODAC system for the comparison of fingerprints of third-country national or stateless applicants</i></p>	<p>*Proposal by the Commission COM(2008)0285, 3 December 2008</p> <p>*First reading by the Parliament, adopted report, 7 May 2009</p> <p>*Next steps: common position of the Council. *Possibly: second reading in Parliament, second common position of the Council, conciliation</p> <p>PROCEDURE FILE</p> <p>Position of the UNHCR</p>	<p>*Committee on civil liberties, justice and home affairs, Monica Luisa Macovei (EPP)</p>