



EU Asylum law: new proposals



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EU Asylum Law - Background



- Pre-Amsterdam treaty: Dublin Convention and soft law
- Treaty of Amsterdam: 'first pillar' competence
- Tampere: Common European Asylum System planned
- First phase minimum standards; second phase more harmonisation



First phase CEAS: 2003-05



- Dublin II Reg
- Eurodac
- Qualification Directive
- Asylum procedures Directive
- Reception conditions Directive (IE opt-out)

Second phase CEAS: 2010-13



- Dublin III Reg (IE opt-in)
- Eurodac (IE opt-in)
- EU asylum agency (IE opt in)
- Qualifications Directive (opt out)
- Procedures Directive (opt out)
- Reception conditions directive (belated opt in)
- Nb applies fully to subsidiary protection



Refugee crisis proposals

- Relocation decisions x2 – 2015 – expired 2017
- Proposals re Dublin, safe country list - fail
- 2016 overhaul – fail
- Qualification Reg; asylum procedures Reg; asylum agency Reg; Dublin IV reg; Eurodac reg; resettlement reg; reception directive
- 2018 returns directive proposal - linked

2016 proposals to date

- Asylum agency – agreed, but later Commission proposed revision is controversial
- Qualification, reception, resettlement – quasi-agreed but Council wouldn't accept
- Eurodac – partly agreed
- Procedures, Dublin – not agreed in Council
- 2018 returns proposal – mostly agreed in Council, EP no position

2020 relaunch



- Asylum agency, Qualification, reception, resettlement, returns – should get back to talks on quasi-agreed texts
- Eurodac, procedures – revised proposals
- Dublin – new proposal
- Force majeure – new proposal
- Screening - new proposal



2020 proposals – Irish position



- Asylum agency, Qualification, reception, resettlement, returns – IE apparently opted out of initial proposals
- Eurodac, procedures – IE opt out; can it opt in to revised proposals now?
- Dublin, force majeure – new proposals, 3 month deadline
- Screening – builds on Schengen, must opt-out



Opt-out consequences

- After adoption, EU can kick IE out of measures which the new laws amend
- High threshold – ‘inoperable’ etc – never previously applied to IE or UK
- Possibly applies to asylum agency?
- IE can opt in after adoption
- Or new laws applying to 25 MS co-exist with Ireland applying earlier version



Ireland, Asylum and CJEU



- C-175/11 HID – asylum procedures, first phase still applied across EU
- C-277/11 M – qualification directive applies to subsidiary protection; asylum procedure directive does not, unless there is a single procedure (not in IE at the time); however right to be heard applies to SP applications



Irish CJEU Asylum Cases



- C-604/12 – IE can have separate procedures; but SP application can't be delayed until after refugee application decided, and procedure cannot take an unreasonable time
- C-560/14 MM II – more detail on procedural rights in SP applications – in particular an interview



Irish CJEU Asylum Cases



- C-429/15 Danqua – effectiveness of EU law precludes Irish rule re timing of a SP application
- C-661/17 MA – Dublin reg: Brexit issues; discretionary clauses; rights of the child
- C-322/19 and C-385/19 – reception (access to employment) and Dublin system
- C-616/19 – Dublin III/asylum procedures – inadmissible due to having SP in MS?