

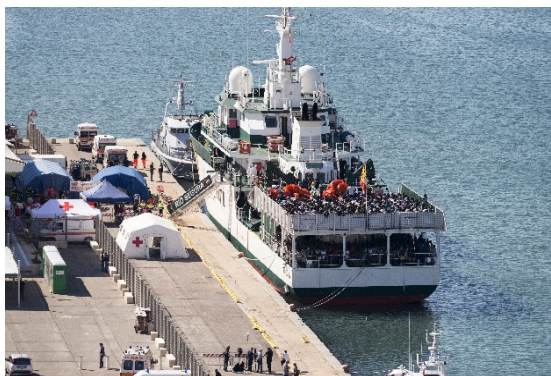
# Introducing the European Union agency for asylum

## SUMMARY

The European Asylum Support Office (EASO) is a European Union agency that provides tools to help the EU Member States prepare for an influx of asylum applicants and implement EU legislation on the ground. The Malta-based agency was established in 2010 as an impartial centre of expertise, with the objective of developing practical cooperation between the Member States, offering support in the event of particular asylum-related pressures and providing evidence for EU policy-making.

In 2016, EASO played a major role in implementing the immediate actions outlined in the European agenda on migration, which focused on strengthening the EU's emergency response to the migration crisis. The European Commission has also called for a strengthened role for EASO in other related areas. To enable the agency to fulfil its new tasks, build up staff, and deliver operational and technical support to Member States, EASO's budget has seen a nearly tenfold increase over the past seven years, from €14.6 million in 2014 to close to €140 million in 2021.

However, concerns have been voiced regarding the way EASO's mandate has expanded in practice, without the necessary legal basis, and regarding the lack of transparency or appropriate monitoring mechanisms vis à vis its activities. In 2016, as a response to the shortcomings revealed in the EU's migration management, the Commission presented a proposal to amend and expand EASO's mandate, also changing its name to the European Union agency for asylum to reflect its stronger powers. As part of the asylum reform package, the proposal was put on hold, but was then relaunched as part of the new pact on asylum and migration in September 2020. On 29 June 2021, the European Parliament and the Council reached a political agreement on the agency. To enter into force, the agreement now needs to be endorsed formally by the co-legislators. The text agreed was debated in plenary session on 7 October 2021, and the Parliament is expected to vote on it during November 2021.



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## Introduction

The numbers of asylum-seekers arriving in the EU has been increasing steadily since 2008, owing to the geopolitical situation in several of the EU's neighbouring countries, reaching record highs in 2015-2016, before starting to subside again more recently. Migrants embark on dangerous journeys with the intention of crossing the EU's external border to apply for [asylum](#), i.e. protection given by a state on its territory to a person who is unable to seek protection in their own country for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Many asylum-seekers do not cross the border at authorised border crossing points because they lack travel documents. Smugglers take advantage of the precarious situation of people in need of protection. Moreover, these migrant flows are mixed, consisting of both asylum-seekers and irregular migrants (people seeking better economic opportunities). While the international human rights law principle of [non-refoulement](#) means that asylum-seekers cannot be refused entry, the [Schengen Borders Code](#) provides for the return of irregular migrants who do not wish to apply for asylum or who are considered not to be in need of international protection.

Although the EU has come a long way from [initially autonomous](#) national asylum policies, responsibility for implementing EU asylum and migration policy still lies with the Member States. In an effort to harmonise the treatment of asylum-seekers throughout the EU, the common European asylum system ([CEAS](#)) was set up in 1999 to establish common standards for the Member States' procedures for granting and withdrawing international protection (including both refugee and [subsidiary protection](#) status).

National border authorities have an obligation to screen and fingerprint all migrants apprehended crossing the EU border irregularly and to channel them into the appropriate procedure – asylum or return. National border guards are supported by [Frontex](#), the European Border and Coast Guard Agency, which deploys officers to help with border control and migration management, particularly in cases of disproportionate pressure on an external border section. The European Asylum Support Office ([EASO](#)) provides tools to help the Member States prepare for an influx of asylum applicants and implement EU legislation on the ground. It also supports Member States that are facing particular asylum-related pressures.

## Context

Between 2014 and 2015, [migratory flows](#) into the EU grew substantially, exhausting national reception capacities, revealing gaps in the registration of arrivals, and exacerbating the [shortcomings](#) of the current migration management system. In 2016, Frontex's [annual risk analysis](#) indicated that the majority of people who entered through Greece, and many of those who entered through Italy, moved on to other EU Member States, mostly Germany. Frontex estimated that in 2015, around 1 million persons travelled through the EU without proper travel documents. This gave rise to new challenges for the Member States, which had to find ways to register and transport large numbers of people. It also led to fears of threats to internal security, as the identity and motivation of migrants remained unchecked.

The European Commission, committed under the [European agenda on migration](#) to finding solutions to the migratory challenge, proposed to reform the [legal framework](#) of the common European asylum system for the reception and recognition of persons in need of international protection. In the legislative package presented on 4 May 2016, aimed at reforming the CEAS, the Commission put forward three proposals: amending the [Dublin Regulation](#), establishing a [European Union agency for asylum](#) and reinforcing the [Eurodac](#) system for fingerprinting migrants. This first package was complemented on 13 July 2016 with the publication of three further proposals: to replace the [Asylum Procedures Directive](#) and the [Qualification Directive](#) with regulations (directly applicable in the Member States) and to reform the [Reception Conditions Directive](#).

As the reform of the CEAS reached an impasse in interinstitutional negotiations, on 23 September 2020, the Commission presented a [new pact on migration and asylum](#), comprising a new legislative package aimed at amending and complementing the 2016 proposals. The proposal for a regulation on a European Union agency for asylum was an integral part of the new pact, with the Commission calling on the co-legislators – Parliament and Council – for swift adoption of the regulation.

## EASO's structure and mandate

One of a number of [decentralised EU agencies](#) set up to perform technical and scientific tasks and help the EU institutions implement policies and take decisions, EASO was established in 2010 by a Parliament and Council regulation and became fully operational in mid-2011. The Malta-based agency has three key objectives:

- to develop practical cooperation among the Member States on asylum by facilitating exchanges of information on countries of origin, providing support for translation/interpretation and for training of asylum officials, and assisting in the relocation of beneficiaries of international protection;
- to support Member States that are under particular pressure, not least through the mechanism for early warning, preparedness and crisis management, and the coordination of asylum support teams. These teams help to manage asylum applications and put appropriate reception facilities in place;
- to contribute to the implementation of the common European asylum system by collecting and exchanging information on best practices, drawing up an annual report on the asylum situation in the EU, and defining technical orientations on the application of the EU's asylum instruments.

EASO is intended to be an impartial and transparent centre of expertise, which – in addition to practical, technical and operational support for Member States – provides evidence for EU policy-making and legislative drafting in all areas linked to asylum. Stakeholders from international organisations and civil society are closely involved in EASO's activity, for instance through its annual [consultative forum](#). EASO has working arrangements with EU agencies such as Frontex, the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice ([eu-LISA](#)), the Fundamental Rights Agency ([FRA](#)), and also with inter-governmental organisations such as the International Organization for Migration ([IOM](#)) and the United Nations High Commissioner for Refugees ([UNHCR](#)). The administrative and management structure of EASO comprises the [management board](#) – EASO's planning and monitoring authority – which is composed of representatives of the Member States, the European Commission and the UNHCR; and the [executive director](#), a position held by Nina Gregori since 2019. The executive director is assisted by a management team.

The agency, currently made up of around 300 [staff members](#), is involved in a [variety of activities](#), such as gathering and sharing country-of-origin information, and providing training for national authorities. It also publishes an annual asylum [report](#) taking stock of key developments in asylum and reporting on migratory patterns, changes in policies, best practices and remaining challenges. Moreover, at the request of a Member State 'under particular pressure', EASO can provide [operational support](#) in the form of various kinds of operation. This support includes deploying asylum support teams made up of seconded national experts, including interpreters. Greece, Spain, Italy and Cyprus have benefited from this type of support. In recent years, EASO has also assisted Bulgaria, Luxembourg and Sweden.

## Expanded role

It is important to note that processing asylum applications remains a competence of national authorities, as from the outset EASO has never been given a mandate in asylum decision-making.

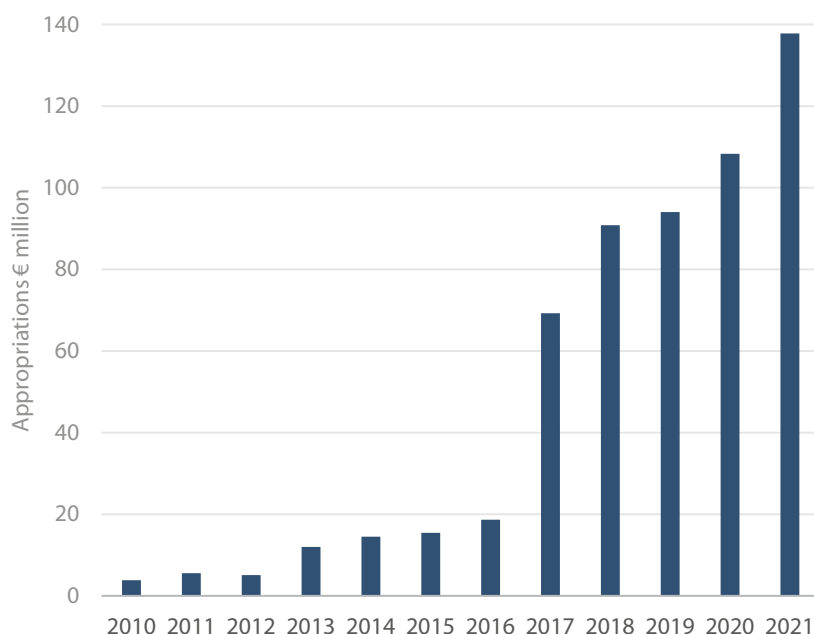
However, in practice, EASO has been engaged in the joint processing of asylum applications: conducting interviews and issuing non-binding opinions on the admissibility of asylum applications in certain countries, such as Greece. While the final decision lies with the national authorities, the impact of the opinion formed by EASO is arguably significant, if not decisive. In fact, EASO's role has gradually expanded since its establishment. In 2013, the recast CEAS legal framework introduced a more significant role for EASO in helping Member States implement the CEAS. EASO was given a mandate to provide asylum-related information and deliver training to national authorities. For Member States under particular pressure, EASO could set up and deploy asylum support teams consisting of national experts. EASO was given a key role in the early warning, preparedness and crisis management mechanism (EWM), as provided for in Article 33 of the recast [Dublin Regulation](#). The EWM aims to detect deficiencies and situations of pressure in national asylum systems so as to make sure that the Member States take appropriate action to avert further deterioration of the asylum system. The mechanism has never been activated to date.

EASO was called on to play a major role in implementing the immediate actions outlined in the [European agenda on migration](#) that focused on strengthening the EU emergency response to the 2015-2016 migration crisis. Together with Frontex and Europol, EASO has been active in the [hotspots](#) in Greece and Italy and assisted with the identification, fingerprinting and registration of incoming migrants. It was involved in the implementation of the EU [relocation](#) programme, the [EU-Turkey statement](#), and the EU [resettlement](#) schemes. The European Commission [reports](#) that in 2011-2021, EASO experts registered 40 % of all asylum applications submitted in Greece, Italy, Cyprus and Malta, carried out 80 % of assessments of the best interest of children in Greece, and were in charge of all post-disembarkation relocations from Italy, Cyprus and Malta. The Commission has also [called](#) for a greater role for EASO in other areas, including in identifying risk trends, providing the Member States with guidance on improving the standard of reception conditions, and developing guidelines for strengthening legislative provisions against abuses.

## EASO's budget

To enable the agency to fulfil its new tasks, increase its staff and deliver operational and technical support to the Member States, EASO's budget has grown nearly tenfold over the past seven years, from €14.6 million in 2014 to €137.8 million in 2021, as illustrated by Figure 1 below.

Figure 1 – Evolution of EASO appropriations



Data source: Definitive adoption of the European Union's general budget for the financial years 2010-2021, [Official Journal of the European Union](#).

## Perceived shortcomings

EASO's activity has generated some criticism over the years. The main concerns voiced by stakeholders and academics relate to the way the expansion of EASO's mandate in practice is not reflected by the legal situation, the confusion of tasks between national authorities and EASO agents at the EU's external border, and the lack of transparency and appropriate monitoring mechanisms. Critics have also questioned EASO's accountability both as regards the execution of its budget and the need to safeguard the fundamental rights of migrants and asylum-seekers.

### Shortage of deployed experts

In the context of greatly increased demand for assistance, EASO has been facing difficulties in recruiting and deploying experts. The European Commission has repeatedly [urged](#) Member States to respond more promptly to EASO's calls for experts to ensure the adequate presence of EASO on the ground. For example, experts were [lacking](#) to support the EU relocation scheme in Greece and Italy and for the contingency plan in Italy. However, the problem was not only Member States' unwillingness or incapacity to provide enough experts at the outset of intense migratory flows. Since 2014, EASO has also lacked funds for more recruits. Amnesty International already [pointed out](#) in a 2011 report that the financial resources allocated to the agency did not reflect the high expectations placed on it to support the EU Member States and institutions.

### Mandate, transparency and accountability

A [study](#) on the implementation of the common European asylum system, prepared for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) in May 2016, recommended extending EASO's mandate to cover screening functions, including assessment and decision-making on the eligibility of asylum applicants for relocation (under a permanent EU relocation system). It argued that, in the long term, the agency should 'gradually take responsibility for processing asylum claims in one single asylum procedure' and 'should have the competence to grant international protection status to applicants, mutually recognised throughout all EU Member States'. Another 2016 European Parliament [study](#) on the reform of the Dublin III Regulation noted that EASO's assistance had 'not yet had a strong impact in operational terms' owing to its limited resources and reduced scale of operations. The study suggested centralising support services for status determination in the hands of a new asylum agency and conferring on it the task of determining the Member State responsible for international protection.

In 2021, a [study](#) commissioned by Parliament's LIBE committee on the European Commission's legislative proposals on the new pact on migration and asylum observes that the pact does not significantly alter the legal mandate of EU agencies. According to the study, 'this results in a situation whereby the novel functions envisaged for EU agencies are not satisfactorily embedded in their current legal framework'. Academic researcher David Fernández Rojo [explains](#) that the agency 'will neither be conferred decision-making powers regarding asylum applications, nor executive or enforcement tasks on the ground', drawing a parallel with the assisting role of the European Border and Coast Guard Agency. Since EASO has been given more and more tasks, the exercise of these executive powers and discretion left to its mostly deployed staff has direct impact on the asylum process and therefore the fundamental rights of migrants and asylum-seekers. Academics, such as Lilian Tsourdi, [argue](#) that this imperatively calls for enhanced accountability arrangements. She [comments](#) that the pact's legal instruments 'do not even fully embed, or regulate, existing *de jure* and *de facto* developments, such as joint implementation patterns'. Tsourdi argues that the pact reinstates administrative cooperation between Member States, which may not be best suited for providing 'regional public goods', i.e. asylum provision and border protection. She also fears that this approach may jeopardise migrants' fundamental rights. This view is shared by the European Centre for Constitutional and Human Rights, which is of the [opinion](#) that EASO's involvement in Greek hotspots has exceeded its competence and failed to ensure respect for migrants' fundamental rights.

According to Gaia Lisi and Mariolina Eliantonio, ever since the *de facto* expansion of EASO's activity in the EU hotspots, the asylum decision-making process no longer qualifies as a national procedure, but should be considered as a form of shared administration between different national authorities and EU agencies. Lisi and Eliantonio also draw attention to the possible implications of this development for asylum-seekers, and point to shortcomings in the judicial accountability of EASO when processing asylum requests. In their [opinion](#), the 'actual role of EASO is no longer reflected in the current legislative accountability arrangements'. They describe the difficulties of challenging asylum decisions in the hotspots as threefold. Firstly, migrants have limited access to legal aid in the hotspots. Secondly, they may not have time to challenge the admissibility decision of their claim as they may have already been returned to their country of origin. Thirdly, challenging specifically EASO's action in the processing of asylum requests in hotspots is complicated – a direct action under [Article 263](#) of the Treaty on the Functioning of the European Union (TFEU) seems unfeasible, but for [Article 267](#) TFEU it is difficult to distinguish clearly the part that EASO played in national decision-making.

The 2021 LIBE study also points out that EASO's mandate is not driven by fundamental or human rights, and that the agency's own activities in providing coordination or operational support can in fact lead to violations of these rights. Referring to the underlying tension between a monitoring role and an expanded operational mandate, the study points out challenges from a fundamental rights and good administration point of view. Tsourdi, in this respect, [sets her hopes](#) on extra-judicial accountability through the [European Ombudsman](#) and the individual complaints mechanism to be set up within EASO under the new proposal.

## Budget execution

In 2019, EASO attracted [criticism](#) for the execution of its 2018 budget and receiving a [qualified opinion](#) from the Court of Auditors regarding its payments, after having been the only agency to receive an [adverse opinion](#) in 2017. EU agencies are required to have the same level of internal control (including internal audit and legal controls) as the Commission's directorates-general, but for EASO these controls were revealed to be missing. In its 2019 opinion, the Court of Auditors found irregularities in a major procurement in 2018 and expressed concern over EASO's staffing situation.

## Proposal for a European Union agency for asylum

As a response to the heightened migration pressure in the 2015-2016 period – which revealed shortcomings in migration management in the EU – in May 2016 the European Commission presented a [proposal](#) to amend and expand EASO's mandate, and change its name to the European Union agency for asylum, to reflect that expanded mandate more clearly. According to the proposal, the agency would ensure the efficient and uniform application of EU asylum law so as to achieve greater convergence between the Member States' asylum systems. The co-legislators reached a first provisional agreement on the proposal in June 2017. However, the conclusion of the process was put [on hold](#) on account of the Council's 'package approach' to asylum reform files, whereby all the interlinked asylum files would be adopted together rather than separately.

On 12 September 2018, the Commission presented an [amended proposal](#) for a regulation on the European Union agency for asylum. Taking on board remarks made by the co-legislators, this proposal aimed to ensure full respect for fundamental rights in the uniform application of EU asylum law, bring more convergence into the assessment of applications, and add a monitoring mechanism to improve the functioning of the CEAS. In line with the [report](#) of Parliament's LIBE committee on the proposal, the agency would be able to deploy liaison officers – to both Member States and third countries – to assist in the implementation of the CEAS, including help with contingency plans in cases of disproportionate pressure on their asylum systems. The Member States would also be required to appoint a national contact point for communicating with the agency. The agency, for its part, would gather qualitative and quantitative information on the implementation of the CEAS, train Member States' experts, assist the Commission in assessing and designating third countries as

safe countries of origin, and publish regularly reviewed guidance notes on countries of origin. The agency would report to the European Parliament twice a year. While monitoring the application of the CEAS in the Member States, the agency would have a mandate to draw up recommendations on corrective measures. The progress achieved in the implementation of these corrective measures should be reported to the Commission and Parliament. The proposal also created the post of fundamental rights officer and established a complaints mechanism to ensure respect for fundamental rights in all the agency's activities.

In September 2020, the proposal was integrated into the [new pact on asylum and migration](#), with the Commission urging the co-legislators to adopt the regulation promptly.

On 29 June 2021, the European Parliament and the Council reached a new [political agreement](#) to rename EASO the European Union agency for asylum, building on the previous 2017 agreement. The Commission Vice-President for Promoting our European Way of Life, Margaritis Schinas, [welcomed](#) the agreement, commenting that 'Member States will now be able to rely on the full operational support of the EU asylum agency, both under normal circumstances and when they are in difficulty'. Commissioner for Home Affairs Ylva Johansson [added](#) that 'it will also help us move away from crisis into preparedness and response', seeing it as a welcome departure from the Council's package approach towards the asylum reform proposals. Nevertheless, there have been [media](#) reports that a 'Med 5' group of countries in Council (Greece, Spain, Italy, Cyprus and Malta) would only agree to the provisional agreement if a '[sunrise clause](#)' was added to the text – meaning it can only be implemented once the entire package is agreed – thereby deferring the application of certain provisions on the agency's new monitoring tasks to a later date.

The main reinforcements to the mandate of the agency are aimed at:

- making asylum systems more efficient by providing Member States with enhanced operational and technical support (including training, preparedness, information analysis and exchange of information);
- improving assistance on request thanks to a reserve of 500 experts, including interpreters, case handlers and reception specialists. The agency will have a mandate to prepare the entire asylum procedure for decision-taking by national authorities, and assist in the appeal stage;
- developing operational standards, indicators, guidelines and best practices, to contribute to the uniform implementation of EU asylum law;
- monitoring and reporting on the Member States' asylum and reception systems to ensure more harmonised practices in the Member States. Based on these reports, the Commission will be able to issue recommendations with assistance measures. A 'sunrise clause' specifies that the new monitoring mechanism will mostly apply from 31 December 2023, and will apply fully once the Dublin Regulation has been revised;
- supporting the EU and Member States' resettlement schemes and capacity-building in third countries to improve their asylum and reception systems, based on the cooperation with United Nations agencies.

To enter into force, the agreement now needs to be endorsed formally by the co-legislators. A [plenary](#) debate in the European Parliament took place on 7 October 2021; the vote in the full house is scheduled for the November I 2021 part-session. Aleš Hojš, the Slovenian Minister of the Interior representing of the Slovenian Presidency of the Council of the EU, is keen to finalise [adoption](#) of the proposal.

## European Parliament position

Members of the European Parliament [welcomed](#) the strengthening of EASO's mission, including with regard to the processing of asylum applications by national authorities and addressing the root causes of migration in third countries. At the same time, Members insisted on enhancing respect for fundamental rights and the EASO's accountability, specifically through the establishment of a

fundamental rights officer and a new complaints mechanism. As regards the new monitoring mechanism, Parliament suggested that EASO should monitor the implementation of the CEAS in the Member States every three years, as opposed to every five as proposed by the Commission.

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