

LGBTI rights in the reform of the Common European Asylum System (CEAS)

What is this paper for?

Amongst those seeking asylum in the EU are also lesbian, gay, bisexual, trans and intersex (LGBTI) people. Some are escaping situations unrelated to their sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIESC), while others are fleeing environments where they face persecution precisely because they are LGBTI. In either case, their SOGIESC exposes them to additional vulnerabilities requiring specific protections and solutions under the Common European Asylum System (CEAS), and may indeed also be grounds for their asylum claims.

The aim of this briefing is to provide an overview of the CEAS reform: what it is, how it affects LGBTI people, and what can be done by civil society organisations to advocate for better recognition and protection of LGBTI people in the reformed CEAS.

What is the CEAS?

The CEAS is the [Common European Asylum System](#), which provides common minimum standards across the EU for the treatment of all asylum seekers and their claims. It derives from the understanding that asylum is a fundamental right and granting it an international obligation, stemming from the [1951 Refugee Convention](#). All EU Member States are party to this Convention, and therefore bound by it. The CEAS is applicable to all asylum seekers in the EU, and contains specific references to SOGIESC as well as general provisions that affect how LGBTI people experience asylum in the EU. Details of (potential) SOGIESC-specific references can be found [in this briefing](#).

The CEAS currently in force comprises five legal texts:

- [Qualification Directive](#)
Establishes eligibility for international protection and the resultant rights, including residence permits, travel documents, access to employment and education, social welfare, healthcare, and access to accommodation and integration facilities.
- [Asylum Procedures Directive](#)
Sets common procedures for the granting and withdrawing of refugee status.
- [Reception Conditions Directive](#)
Deals with the living conditions for asylum seekers, including access to suitable housing, food, clothing, healthcare, education and employment.
- [Dublin Regulation](#)
Determines the Member State responsible for examining a given asylum application.

- [EURODAC Regulation](#)
Establishes an EU asylum fingerprint database to provide fingerprint comparisons for helping to establish which Member State is responsible for examining a given asylum application, i.e. to support the implementation of the Dublin Regulation.

For an overview how the CEAS functions, see the factsheet “[A Common European Asylum System](#)”, published by the European Commission’s Directorate-General for Migration and Home Affairs.

Reforming the CEAS

In 2016 a series of reforms for the CEAS was proposed by the European Commission. These are intended to harmonise standards across national asylum legislation, to ensure asylum seekers are treated uniformly across the EU, and to introduce greater balance in the share of positive asylum decisions across Member States. The proposed reforms consist of

- replacing the Qualification Directive with a new Qualification Regulation
- replacing the Asylum Procedures Directive with a new Asylum Procedures Regulation
- recasting the Reception Conditions Directive
- recasting the Dublin Regulation (Dublin IV)
- recasting the EURODAC Regulation

as well as the introduction of

- a new [Union Resettlement Framework Regulation](#)
Establishing a gateway for UNHCR-recognised refugees into the EU.
- an [EU Agency for Asylum \(EUAA\)](#)
Replacing the EU Asylum Support Office (EASO) with an expanded mandate, as a full EU agency to support and train Member States in the implementation of the CEAS.

What’s the difference? Regulations are binding and automatically apply to all Member States once entered into force, whereas directives set forth outcomes that must be achieved, but allow each Member State to decide how this should be transposed into national law.

This reform of the CEAS is **an opportunity to strengthen the rights of LGBTI people seeking asylum in the EU**. How? Some of the key issues around the current CEAS can be [read here](#), while here you find a detailed explanation on [protecting the rights of LGBTI asylum seekers and refugees in the reform of the CEAS](#). In brief, our key demands are

- that the new Qualification Regulation, the Reception Conditions Directive and the Procedure Regulation should enhance protection, reception and procedural standards offered to people persecuted on the ground of their sexual orientation, gender identity, gender expression and sex characteristics;
- that outdated or inappropriate language excluding trans and intersex people or linking LGBTI people to criminal practices should be removed;

- that the definition of asylum seekers' family members should be improved to clearly include same-sex partners and their families;
- that people belonging to persecuted minorities, including LGBTI people, should not be subject to accelerated procedures, like lists of safe countries of origin, safe third countries, etc.

The more specific the final texts of the CEAS files are with respect to recognising the particular needs of LGBTI people and protecting them within the European asylum system, the better protected they will be from discrimination and victimisation on the grounds of their SOGIESC. This is because agencies and organisations working on implementation in the asylum context within the EU are required to ensure that the appropriate supports are provided as prescribed by the CEAS (and as transposed into national law), and can be held accountable should they fail to do so.

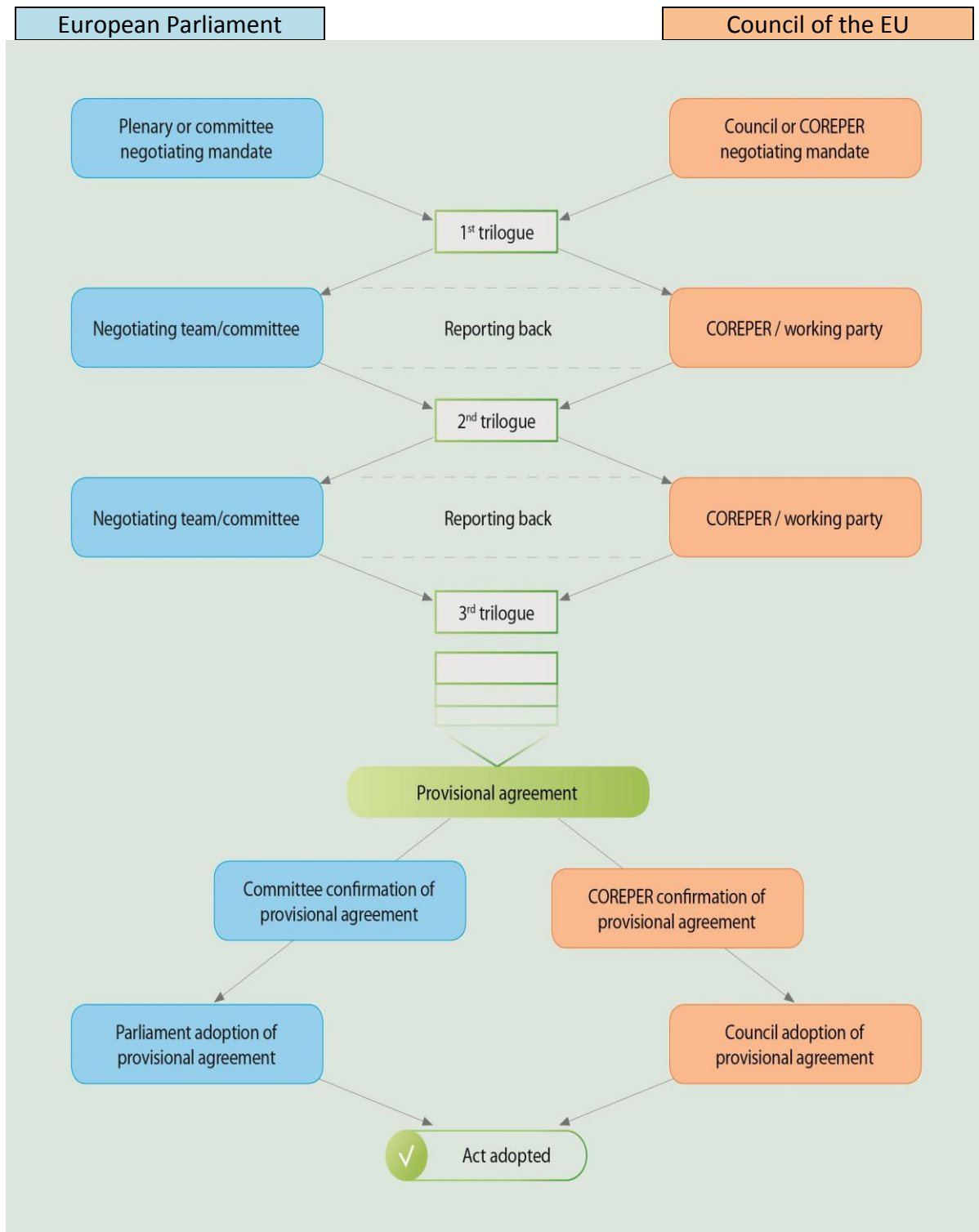
How does the reform work?

The reform of the CEAS follows the [ordinary legislative procedure of the EU](#), and involves negotiations – ‘trilogues’ – between the Parliament, the Commission and the Council. The Parliament and the Council each define their respective negotiating positions and designate negotiators to each file. Moderated by the Commission, these negotiators then try to come to an agreement that is acceptable to each institution.

Trilogues may be organised at any stage of the legislative procedure (first, second or third reading). Any provisional agreement reached in trilogue is informal, and requires approval via the formal procedures applicable within each of the institutions. For the European Parliament, this means approval by the relevant [Committee](#), while for the Council, this means approval by the Permanent Representatives Committee, known as [COREPER](#). This is typically a lengthy process, and can take years to complete.

An overview of the negotiation process under the Ordinary Legislative Procedure can be seen overleaf, on Page 4.

Negotiation Process under the Ordinary Legislative Procedure



Source: http://www.epgencms.europarl.europa.eu/cmsdata/upload/48c45c20-81e9-4f2e-b813-9b7c53225d3b/Chart_3_EN.jpg

Routes for improving LGBTI rights in the EU asylum system

Politically

The reform of the CEAS is a rare opportunity to change the very legislation that governs the treatment of LGBTI people throughout the EU. Informing political decision-makers of the importance of explicitly protecting the rights of LGBTI people within the CEAS is thus vital for achieving desirable and progressive outcomes. This includes making clear *why* these elements are important. The **European Parliament** is typically accessible through the files' respective rapporteurs as well as via the [European Parliament's Intergroup on LGBTI Rights](#). Access to **Member States** – which compose the Council of the EU – can be trickier, with some being more open to discussions than others. The amenability of the Council position also depends on which Member State(s) hold(s) the [presidency of the Council of the EU](#) while negotiations are ongoing, as they represent all Member States in the trilogues. Thus, particularly when it comes to influencing the Council position, national LGBTI organisations can play a key role by lobbying their governments to take positions in the negotiations that are favourable to LGBTI asylum seekers and refugees.

Judicially

Separately, the [Court of Justice of the EU \(CJEU\)](#) can improve the experience of LGBTI people in the asylum system by interpreting existing EU law in ways that protect their rights. These rulings are binding for all Member States, and must be applied in the same way across the EU. Infringement proceedings can be brought against Member States that refuse to comply. Similarly, the [European Court of Human Rights \(ECtHR\)](#) can be used to establish minimum legal standards in European States for the treatment of LGBTI asylum seekers and refugees, given the ECtHR's role in ensuring that States adhere to their respective commitments to the European Convention on Human Rights. A key difference to the CJEU though is that rulings by the ECtHR are binding only to the State to which the particular case pertains.

Organisational Cooperation

Important for advancing this effort are also allies working for the rights of asylum seekers, refugees and migrants in broader contexts. The roles of these organisations in protecting the rights of LGBTI people in the asylum system can be twofold: on one hand by supporting such protections in their own advocacy with national and EU governments, and on the other hand by ensuring that the specific needs of LGBTI people are addressed in their existing operations on the ground. Some examples of such organisations are:

- [Churches Commission for Migrants in Europe \(CCME\)](#)
- [Danish Refugee Council \(DRC\)](#)
- [European Council of Refugees and Exiles \(ECRE\)](#)
- [International Catholic Migration Commission \(ICMC\)](#)
- [International Committee of the Red Cross \(ICRC\)](#)
- [International Rescue Committee \(IRC\)](#)
- [Médecins du Monde \(MdM\)](#)
- [Médecins sans Frontières \(MSF\)](#)
- [Safe Passage](#)
- [UNHCR](#)

Current Status of the CEAS negotiations *(last updated: 31 December 2018)*

Item	EU Parliament Rapporteur	Status
Qualification Regulation [2016/0223(COD)]	Tanja Fajon [S&D]	<ul style="list-style-type: none"> Trilogues began in September 2017 Provisional agreement reached on 14 June 2018 Final confirmation on the agreement postponed by COREPER, which wants to wait for provisional agreements on all files before proceeding
Asylum Procedures Regulation [2016/0224(COD)]	Laura Ferrara [EFDD]	<ul style="list-style-type: none"> The Parliament adopted its negotiating position in May 2018 The Council has yet to find consensus for a negotiating position To continue under the Romanian Presidency
Reception Conditions Directive [2016/0222(COD)]	Sophie In't Veld [ALDE]	<ul style="list-style-type: none"> Trilogues began in December 2017 Provisional agreement reached on 14 June 2018 Final confirmation on the agreement postponed by COREPER, which wants to wait for provisional agreements on all files before proceeding
Dublin IV [2016/0133(COD)]	Cecilia Wikström [ALDE]	<ul style="list-style-type: none"> Generally considered the most problematic file, due to disagreements between Member States The Parliament adopted its negotiating position on 6 November 2017 The Council has yet to find consensus for a negotiating position To continue under the Romanian Presidency
EURODAC Regulation [2016/0132(COD)]	Monica Macovei [ECR]	<ul style="list-style-type: none"> Trilogues began in September 2017 Provisional agreement reached on 19 June 2018
EUAA [2016/0131(COD)]	Peter Niedermüller [S&D]	<ul style="list-style-type: none"> Provisional agreement reached on 28 June 2017 Adopted by LIBE Committee on 29 June 2017 Endorsed by COREPER on 6 December 2017 Elements of the proposal remain outstanding, as they refer to other files in the CEAS <ul style="list-style-type: none"> Further work on the proposal thus postponed pending developments in the other CEAS files
Union Resettlement Framework Regulation [2016/0225(COD)]	Malin Björk [Gue/NGL]	<ul style="list-style-type: none"> Trilogues began December 2017 Provisional agreement reached on 13 June 2018 Final confirmation on the agreement postponed by COREPER, which wants to wait for provisional agreements on all files before proceeding

Outlook of the CEAS reform *(last updated: 31 December 2018)*

On 4 December 2018, [the European Commission proposed decoupling the CEAS files](#), highlighting in a progress report the lack of legal or technical barrier to “adopting one or several of these proposals separately from the others”.

Decoupling the files would allow them to be ratified individually. Concretely, this would be most immediately applicable to those files for which provisional agreements have already been reached, even as other more contentious files remain open (i.e. Dublin IV and the Procedures Regulation). In this way, five out of the seven legislative files in the CEAS could have been adopted under the Romanian Presidency of the EU, prior to the 2019 European Parliament elections.

This possibility was dismissed by both the Council of the EU and the European Parliament. At the EU Summit on 14 December 2018, eight Member States including Greece, Hungary, Sweden and Italy opposed decoupling the files. European Parliament President Antonio Tajani echoed this, stating that the “package cannot be subdivided” – a position shared by numerous other MEPs heavily involved in asylum issues. This is in part due to concerns that approving other measures separately would remove incentives for reluctant Member States to find agreement on Dublin IV.

It is therefore not expected that the reformed CEAS package or any files therein will be adopted during the current European Parliament, with negotiations likely to continue under the Finnish presidency.