



New asylum recast may undermine the EU's greatest impact on refugee integration



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The EU has had its greatest effects on the integration of beneficiaries of international protection (BIPs) through the stable legal framework of the Common European Asylum System (CEAS). The 2013 Reception Conditions and 2011 Qualification Directives build on the standards set by the 1951 Geneva Convention and aim for its full and effective implementation. As presented in the MPG paper “[Lost in transition? The European standards behind refugee integration](#)”, they guarantee a series of standards that shape the integration process, starting from the reception phase until full legal, socio-economic and socio-cultural integration allows refugees to realise their full potential to contribute to society.

On 13 July 2016, a set of proposals was presented to reform these standards, including to replace the Qualification Directive with a Regulation and to amend the Reception Conditions Directive.¹ The social consequences of these proposals are serious. Since BIPs today are fleeing many protracted conflicts that take on average 25 years to resolve², our societies will have to live with the consequences of these proposals for years—if not generations—to come.

These proposals largely represent a missed opportunity and a potentially major risk for integration. The minor improvements on reception and qualification standards would only marginally improve the situation on the ground in most Member States. Moreover, several of the recast’s proposals would actually delay and undermine the integration process for asylum-seekers and BIPs by reducing support for potentially large numbers and removing some possibilities for more favourable conditions for integration. Unlike the 1st and 2nd generation of the CEAS, which consolidated the most common national practices in EU law, several of these proposals are modelled on hasty and politicised recent restrictions in only a few Member States. These restrictions have not yet been demonstrated to be justified, proportionate or effective for improving integration outcomes.

Overall, national governments and civil society agreed that better implementation of the current Reception and Qualification Directives would have greater effects on integration, without jeopardising the effectiveness of other proposed reforms to the CEAS. Particularly as the Commission’s 2016 asylum proposals were drafted more hastily than previous EU asylum and immigration proposals, these two proposals would need to be revised or seriously amended by Council and Parliament in order to make integration the top priority of this recast and avoid a de facto race-to-the-bottom where Member States are further demanding integration but not effectively supporting BIPs, Member States and the local, social and civil society actors that make integration a reality.

1 Press releases on the proposals: http://europa.eu/rapid/press-release_IP-16-2433_en.htm and http://europa.eu/rapid/press-release_IP-16-2434_en.htm

2 UNHCR (2014) “UNHCR Global Trends 2014: World at War”, <http://www.unhcr.org/556725e69.pdf>

Reform of the Reception Conditions Directive

The objective of the revision of the Reception Conditions Directive is to:

1. further harmonise reception conditions in the EU,
2. reduce incentives for secondary movements,
3. increase applicants' self-reliance and possible integration prospects.

Positive developments for integration

The proposal gives greater attention to some legal and procedural obstacles that further delay socio-economic and socio-cultural integration.

- **Applicants with special reception needs** (Chapter IV) and **unaccompanied minors** (Article 23) would benefit from more rapid and higher quality support:
 - Member States need to assess applicants' special reception needs as systematically and soon as possible (Article 21(1)).
 - Staff must be properly and continuously trained to swiftly recognise and address these special reception needs (Article 21(2)(a)).
 - Victims of torture, rape or other serious form of psychological, physical or sexual violence must be referred to an additional health orientation (Article 21(2)(c)).
 - Guardians of unaccompanied minors should be systematically monitored and not overburdened by their workload (Article 23(1)).
- The proposal clarifies asylum seekers' support for their economic integration:
 - **Access to labour market** after 6 months (Article 15(1)), with the recommendation to decrease this to 3 months (Recital 35 of the Preamble).
 - **Equal treatment on the labour market** is clarified in terms of working conditions, freedom of association and affiliation and social security branches other than family and unemployment benefits (Article 15(3)(a), (b) and (e)).

- Equal treatment now expressly includes **vocational training** directly linked to a specific employment activity, the **recognition of qualifications and skill validation** schemes where documentary evidence is missing (Article 15(3)(c) and (d)).
- Applicants can no longer be required to contribute to the costs of necessary health care (Recital 42 of the Preamble). Article 16 mentions only “material reception conditions”, contrary to the current Directive’s Article 17, referring to both material reception conditions and health care.

Missed opportunities

The majority of the proposed changes are presented under the aim of reducing reception-related incentives for secondary movements within the EU. Only a few changes can be considered as minor improvements on integration when the proposals are compared both to the current Directive and to the situation in the Member States.

- The proposal does not substantially contribute to rapid labour market integration:
 - The proposed 6-month maximum time limit is questionable in terms of its added value. The majority of EU Member States **already have 6 months or shorter waiting periods**³ and the trend to shorten this period has only been positive and accelerating through own-initiative reforms.⁴
 - **Labour market tests** can still be introduced to delay labour market integration. Harmonisation could have led to their removal as most Member States have done so.
- Asylum-seekers are still not guaranteed integration support in all Member States:
 - While asylum-seekers can now be sanctioned for **failing to comply with compulsory integration measures** (Article 19(2)(f)), Member States are surprisingly not required to

³ See Annex 1. 8 applicable Member States have currently longer waiting periods: Croatia, France, Hungary, Latvia, Lithuania, Luxembourg, Slovakia, Slovenia.

⁴ OECD (2016), *Making Integration Work: Refugees and others in need of protection*, OECD Publishing, Paris, France, pages 20-21., Table 2

support these integration measures for asylum-seekers

- The proposal does not clarify that compulsory integration measures need to be accessible, affordable and individualised, in compliance with CJEU case-law (Cases C-579/13, C-153/14)

Risks for past achievements

The proposal's new sanction system risks to delay and categorically exclude potentially large numbers of asylum-seekers from receiving integration support based on reasons unrelated to their individual integration needs or actions in the country.

- **The new situations and sanctions** leading to reduced reception conditions (Article 19(2)(e)-(h)), residence dispersal (Article 7(2)(c)-(d)) and detention (Article 8(3)(c)) might potentially apply to many asylum seekers, even without their knowledge or a real choice:
 - **Sanctioning newly arrived asylum-seekers** based on the way they enter the EU will immediately create poorer integration prospects for these asylum-seekers and potential incentives for secondary movement. For asylum seekers, who have often lost all their income, savings and essential social and family support, material reception conditions and daily allowances are necessary to start rebuilding their new lives. Decreasing the level of this support may simply reinforce or prolong their dependence on state support systems.
 - The sanctions are put forward **without any evidence about their effectiveness for discouraging secondary movements**. A thorough assessment of the real push and pull factors is missing from the very justification of this proposal. New sanctions based on unfounded assumptions and rumours may lead to increased levels of dysfunction and conflict within and between the Member States' reception systems.
 - The wording of the sanctions is also often **vague and leave a wide margin for interpretation**. Hence, the Directive proposal maintains and even expands divergences between Member States, now also in the use of sanctions and disincentives. This might further increase the risk of dysfunction within the asylum system.

Replacement of the Qualification Directive with the Qualification Regulation

The Qualification Directive would be replaced by a binding Regulation, that not only limits Member States' discretion, but also their ability to create more favourable conditions for integration. The proposal is premised on the assumption that the differences between Member States in the rights of BIPs is the major factor creating secondary movements. It argues that the absence of status reviews is what gives international protection its “de facto permanent nature” and creates “an additional incentive for those in need of international protection to come to the EU rather than to seek refuge in other places”. It assumes that shortening their permits and regular reviews of their status will not affect their integration prospects. Based on these assumptions, the proposal lists five objectives:

1. further harmonising the common criteria for recognition,
2. creating more convergence on asylum decisions and recognition rates across the EU,
3. ensuring that protection is granted only for as long as the grounds for protection or serious harm persist, without affecting person's integration prospects,
4. addressing secondary movements of BIPs,
5. further harmonising the rights of BIPs.

Positive developments for integration

Like the Reception Directive recast, the Qualification Regulation's attempt to clarify the integration support and rights of BIPs is unlikely to improve the situation on the ground as these are already guaranteed by the majority of Member States:

- Explicit **equal treatment in employment** in terms of working conditions, freedom of association and affiliation, vocational training and job counselling (Article 30).
- **Access to education and accommodation** under equivalent conditions with third-country nationals who are “in a comparable situation”, but without defining what this means (Articles 31 and 37).
- Clarification of the definition of social security (Article 2(17)) and so-

cial assistance (Article 2(18)), but the possibility remains to restrict social assistance to core benefits for beneficiaries of subsidiary protection (Articles 33 and 34).

- **Integration measures** for BIPs must be **broader and individualised** to match their needs:
 - Member States must provide access to not only language courses, but also civic orientation and integration programmes and targeted vocational training, all taking into account BIPs' specific and individual needs (Article 38).
 - Measures must also facilitate “full access” to employment (Article 30(3)) and to recognition of qualifications and validation of skills (Article 32(2)), not only endeavour to do so, as it is spelt out in the current Directive (Articles 26 and 28)

Missed opportunities

The proposal is further ‘demanding without supporting’ integration by creating new negative sanctions but no positive incentives for integration:

- The proposal guarantees access but not full access to the broader scope of **integration measures** (Article 38(1)).
- Member States could now make **integration measures** obligatory (Article 38) and make access to **social assistance conditional** upon effective participation in these measures (Article 34). However, there are no standards for the quality and extent of this integration support. The proposal does not transpose and develop the relevant CJEU case-law (Cases C-573/13, C-153/14) which requires an individualised approach to both the support and the sanctioning of BIPs.
- The proposal overlooks the need to regulate the potential use of **residence dispersal systems** for recognised BIPs (Article 28(2)). The text is not the set of detailed regulation these systems that one could expect from replacing a Directive with a Regulation, especially following the major CJEU case C-433/14. This case makes clear that residence dispersal systems are only justifiable if they improve a person's integration prospects based on an assessment of their individual needs, which is not distinctly stated in the current text of the proposal

- The proposed Amendment of the Long-Term Residents Directive delays access in case of irregular secondary movement, but does **not offer quicker access as an incentive** for the integration of BIPs who rapidly meet all the other requirements (Article 4). The only option currently on the table is more rapid access after 3 years for highly-skilled BIPs, based on the proposed recast Blue Card Directive (Article 17).
- **The specific integration challenges of unaccompanied minors** are overlooked in the proposed Qualification Regulation. Targeted local social and education support are seriously needed to counter their higher risk of early school leaving, labour exploitation and social exclusion.

Risks for past achievements

Most worryingly, the objective to maintain the EU's past integration achievements is hard to reconcile with the Regulation's proposal to make BIPs more temporary and insecure. This proposal would radically change the policy and situation in most Member States, with the significant potential to discourage BIPs, governments and local actors from investing in integration.

- The proposal on residence permits represents a major de facto restriction across the EU. Although the duration of the permits may seem the same as under the Qualification Directive, most Member States guarantee more secure permits than the minimum required by the current Directive⁵ (Article 26). Shorter permits lead to more insecurity in the legal status of BIPs and undermine the effectiveness of the previously and newly extended integration rights, such as equal treatment in vocational training or in working conditions.
- A secure integration perspective would be better guaranteed by a permit valid until the moment when BIPs are eligible to apply for long-term residence and prove its self-sufficiency and integration-related requirements. Following a harmonisation logic, the duration could be based on the current average duration of Member States' residence permits (≈5 years for refugees and 2-3 years for beneficiaries of subsidiary protection).⁶

⁵ See: European Council of Refugees and Exiles (June 2016) "Asylum on the clock? Duration and review of international protection status in Europe", page 10
http://www.asylumineurope.org/sites/default/files/resources/aida_brief_permits.pdf

⁶ See Annex 2.

- The proposed temporary permits and frequent renewals would also be linked to **obligatory reviews** of BIPs' status (Articles 15(b) and 21(b)), even if there are no changes in the situation in their country of origin. This proposal creates an inefficient and disproportionate administrative burden for the state. The EC is imposing a resource-consuming bureaucratic step that some Member States have not seen the purpose or need in practice to introduce themselves. For example, France in 2016 replaced its yearly permit renewal system—with similarities to this proposal—with multiannual permits because this systematic status review was useless in 99% of cases (only 7654 refusals for 795.220 renewal requests).⁷ The previous system was found to be ineffective for fighting fraud and irregularity and counter-productive for integration outcomes.⁸
- Articles 15(a) and 21(a) already provide for a review based on changes in the country of origin, independently from the status review. This type of review with longer-term permits would not negatively affect a person's integration prospects, which is the stated objective of this proposal. BIPs would still be given longer-term secure permits that send clear messages to BIPs, potential employers and social actors that there should be no obstacles to invest in long-term integration.
- In case of a status withdrawal, BIPs would only be given a 3-month grace period (Articles 14(5) and 20(3)) to apply for a new permit on different grounds (i.e. work, family, study). They would be unable to apply for long-term residence if they had not met the required number of years of residence, even if they met all of the other conditions on self-sufficiency and integration.

This 3-month grace period is unrealistic for BIPs whose status is unexpectedly withdrawn to submit a successful application, given the well-known difficulties to obtain the necessary documentation and decisions (i.e. sponsorship, recruitment, admission, proven family links). In contrast, the EU institutions have just recently given international students and researchers (recast Directive 2016/801) a minimum of 9 months to secure employment or self-employment after the long-anticipated end of their studies or research (Article 25).

7 See : Matthias Fekl (May 2013) "Sécuriser les parcours des ressortissants étrangers en France", page 14
<http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/134000283.pdf>

8 Ibid., page 12

Annex 1: Labour market access of asylum seekers in EU 28

	Labour market access	Waiting period from filing asylum claim	Labour market test	Restriction to sectors
Austria	Yes	Yes (3 months)	Yes	Yes (tourism and agriculture and apprenticeships in shortage occupations)
Belgium	Yes	Yes (4 months)	No	No
Bulgaria	Yes	Yes (3 months)	No	No
Croatia	Yes	Yes (9 months)	No	No
Cyprus	Yes	Yes (6 months)	Yes	Yes (Agriculture, fishery, manufacture, waste management, trade repairs, cleaning industry, food delivery et al.)
Czech Republic	Yes	Yes (6 months)	No	No
Denmark	Yes	Yes (6 months)	No	No
Estonia	Yes	Yes (6 months)	No	No
Finland	Yes	Yes (3 months with valid ID, 6 otherwise)	No	No
France	Yes	Yes (9 months)	No	No (except for public sector and some legal professions)

Germany	Yes (except for certain origin countries)	Yes (3 months)	Yes (waived after 15 months and for highly skilled jobs and shortage occupations)	No
Greece	Yes	No (conditional on delivery of temporary work permit)	Yes	No
Hungary	Yes	Yes (9 months)	Yes	No
Ireland	No			
Italy	Yes	Yes (2 months)	No	No
Latvia	Yes	Yes (9 months)	Yes	No
Lithuania	No (First instance decision has to be taken within 6 months)			
Luxembourg	Yes	Yes (9 months)	Yes	No
Malta	Yes	Yes (9 months)	No	No
Netherlands	Yes (24 out of 52 weeks)	Yes (6 months)	No	No
Poland	Yes	Yes (6 months)	No	No
Portugal	Yes	Yes (1 months)	No	No
Romania	Yes	Yes (3 months)	No	No
Slovakia		Yes (9 months)	No	No
Slovenia	Yes	Yes (9 months)	No	No
Spain	Yes	Yes (6 months)	No	No

Sweden	Yes (only for asylum seekers with valid ID)	No	No	No
UK	Yes	Yes (12 months)	Yes	Yes (only permitted for occupations in the occupations shortage list)

Sources:

OECD (2016), Making Integration Work: Refugees and others in need of protection, OECD Publishing, Paris, France, pages 20-21., Table 2

Asylum Information Database (2015), Country reports, <http://www.asylumineurope.org/reports%20>

European Migration Network (2015), Ad-hoc query on access to the labour market for asylum seekers, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/protection/654_emn_ahq_access_to_the_labour_market_for_asylum_seekers_wider_dissemination.pdf

Interviews with Aditus Foundation, Diversity Development Group, Providus and Ms. Iris Alexe.

Annex 2: Duration of residence permits for beneficiaries of international protection

Country	Legal basis	Duration of residence permit (in years)	
		Refugee status	Subsidiary protection
EU minimum	Article 24 Qualification Directive	●●●	●
Austria	Article 8(4) Asylum Act	●●●	●
Belgium	Article 49 Aliens Act	●●●●●	●
Bulgaria	Article 6 Trans. Prov. LAR	●●●●●	●●●
Cyprus	Articles 18A(3) and 19(4) Refugee Law	●●●	●
Czech Rep.	Sections 50 and 53a Asylum Act	Permanent	●
Germany	Section 26 Residence Act	●●●	●
Denmark	Aliens Act as reformed	●●	●
Estonia	Article 38 AGIPA	●●●	●
Spain	Article 38(1)(c) Asylum Law	●●●●●	●●●●●
Finland	Section 53(7) Aliens Act	●●●●	●●●●
France	Articles L313-13 and L314-11(B)-(10) <i>Ceseda</i>	●●●●●●●●●●	●●
Greece	Article 21 Law 4375/2016	●●●	●●●
Croatia	Article 75 LITP	●●●●●	●●●
Hungary	Section 23 Gov. Decree 251/2007	●●●●●●●●●●	●●●
Ireland		Permanent	●●●
Italy	Article 23 LD 251/2007	●●●●●	●●●●●
Lithuania	Article 89 Law on Status of Foreigners	Permanent	●
Latvia	Section 36 Asylum Act	Permanent	●
Luxembourg	Article 57 LITP	●●●	●●●
Malta	Article 20 Refugee Regulations	●●●	●●●
Netherlands	Article 28 Aliens Act	●●●●●	●●●●●
Poland	Article 69i Law on Protection	●●●	●●
Portugal	Article 67 Law 26/2014	●●●●●	●●●
Romania	Article 20(5) Asylum Act	●●●	●
Sweden ⁷⁶	Aliens Act to be reformed	●●●	●
Slovenia	Section 81 International Protection Act	Permanent	●
Slovakia	Section 24 Asylum Act	Permanent	●
UK	Rule 339Q Immigration Rules	●●●●●	●●●●●
Norway	Section 66 Immigration Act	●●●	●●●
Switzerland ⁷⁷	Articles 58ff and 83ff Asylum Act	●	●
Serbia	Articles 43 and 61 Asylum Act	Permanent	●
Turkey ⁷⁸	Article 63 LITP	●	●

Source: European Council of Refugees and Exiles (June 2016) “Asylum on the clock? Duration and review of international protection status in Europe

http://www.ecre.org/wp-content/uploads/2016/07/AIDA-Briefing-Asylum-on-the-Clock-duration-and-review-of-international-protection-status-in-Europe_-_June-2016.pdf

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