

## **Refugee rights subsiding?**

Europe's two-tier protection regime and its effect on the rights of beneficiaries



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Austria	Asylkoordination Österreich
Belgium	Vluchtelingenwerk Vlaanderen
Bulgaria	Bulgarian Helsinki Committee
Cyprus	Future Worlds Center
Spain	ACCEM
France	Forum Réfugiés-Cosi
Germany	Informationsverbund Asyl und Migration
Greece	Greek Council for Refugees
Croatia	Croatian Law Centre
Hungary	Hungarian Helsinki Committee
Ireland	Irish Refugee Council
Italy	ASGI
Malta	aditus foundation and JRS Malta
Netherlands	Dutch Council for Refugees
Poland	Helsinki Foundation for Human Rights
Sweden	Michael Williams, FARR and Lisa Hallstedt
UK	British Refugee Council
Switzerland	Swiss Refugee Council
Serbia	Belgrade Centre for Human Rights

The update of the country report on Turkey is pending at the time of writing.

The information contained in this report is up-to-date as of the end of 2016, unless otherwise stated.

## THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database](#) is a database containing information on asylum procedures, reception conditions, detention and content of international protection across 20 European countries. This includes 17 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Sweden, United Kingdom) and 3 non-EU countries (Switzerland, Serbia, Turkey).

The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

❖ **Country reports**

AIDA contains [national reports](#) documenting asylum procedures, reception conditions, detention and content of international protection in 20 countries.

❖ **Comparative reports**

Comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in [2013](#), [2014](#) and [2015](#). This year, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports on [reception](#) and [asylum procedures](#) were published in March and September 2016 respectively.

❖ **Comparator**

The [Comparator](#) allows users to compare legal frameworks and practice between the countries covered by the database in relation to the core themes covered: asylum procedure, reception, detention, and soon content of protection. The different sections of the Comparator define key concepts of the EU asylum *acquis* and outline their implementation in practice.

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AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in [Greece](#), [Hungary](#), [Austria](#) and [Croatia](#).

❖ **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. Nine [briefings](#) have been published so far, covering legality of detention of asylum seekers under the Dublin Regulation; key problems in the collection and provision of asylum statistics in the EU, the concept of "safe country of origin"; the way the examination of asylum claims in detention impacts on procedural rights and their effectiveness; age assessment of unaccompanied children; duration and review of international protection; length of asylum procedures; travel documents; and a statistical update on the Dublin system.

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## Glossary

<b>Acquis</b>	Accumulated legislation and jurisprudence constituting the body of European Union law.
<b>Arrival centre</b>	Facility peculiar to <b>Germany</b> , where various processes such as registration, identity checks, interview and decision-making are conducted in the same facility. <a href="#">Arrival centres</a> set up in 2015 and 2016.
<b>Arrival certificate</b>	Term peculiar to <b>Germany</b> , describing the document provided to asylum seekers after they report to an initial reception centre to certify their intention to apply for international protection.
<b>Asylum seeker(s) or applicant(s)</b>	Person(s) seeking international protection, whether recognition as a refugee, subsidiary protection beneficiary or other protection status on humanitarian grounds.
<b>Dublin system</b>	System establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application, set out in <a href="#">Regulation (EU) No 604/2013</a> .
<b>Humanitarian protection</b>	National status afforded on humanitarian grounds to persons who do not qualify for international protection but whose removal may not be effected for legal or practical reasons. This is not to be confused with the designation “humanitarian status” given by <b>Bulgaria</b> and the <b>United Kingdom</b> for subsidiary protection status.
<b>Qualification Directive</b>	<a href="#">Directive 2011/95/EU</a> establishing common criteria for granting international protection and the content of protection granted.
<b>Qualification Regulation proposal</b>	European Commission <a href="#">proposal</a> for a Regulation establishing common criteria for granting international protection and the content of protection granted, tabled on 13 July 2016.
<b>Recognition rate</b>	Rate of positive asylum decisions, including refugee status, subsidiary protection status or other protection status under national law.
<b>Subsidiary protection</b>	International protection status granted to persons who do not qualify for refugee status but are at risk of serious harm in the country of origin. The term is defined in <a href="#">Directive 2011/95/EU</a> .
<b>Temporary admission</b>	Status peculiar to <b>Switzerland</b> , applicable to persons who do not qualify for refugee status but their removal order cannot be carried out due to international law obligations, humanitarian reasons or practical obstacles.
<b>Temporary subsidiary protection</b>	Status peculiar to <b>Denmark</b> , not bound by the recast Qualification Directive, introduced as a new status in 2016 under Article 7(3) of the Danish Aliens Act, for cases corresponding to Article 15(c) of the Directive.

## List of abbreviations

<b>ACCEM</b>	Spanish Catholic Commission on Migration   Comisión Católica Española de Migración (Spain)
<b>AIDA</b>	Asylum Information Database
<b>ASGI</b>	Association for Legal Studies on Immigration   Associazione per gli Studi Giuridici sull'Immigrazione (Italy)
<b>BAMF</b>	Federal Office for Migration and Refugees   Bundesamt für Migration und Flüchtlinge (Germany)
<b>BÜMA</b>	Confirmation of Reporting as Asylum Seeker   Bescheinigung über die Meldung als Asylsuchender (Germany)
<b>CEAS</b>	Common European Asylum System
<b>CJEU</b>	Court of Justice of the European Union
<b>COI</b>	Country of origin information
<b>DGMM</b>	Directorate-General for Migration Management (Turkey)
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECRE</b>	European Council on Refugees and Exiles
<b>EDAL</b>	European Database of Asylum Law
<b>ELENA</b>	European Legal Network on Asylum
<b>EPIM</b>	European Programme for Integration and Migration
<b>EU</b>	European Union
<b>Eurostat</b>	European Commission Directorate-General for Statistics
<b>FARR</b>	Swedish Network of Refugee Support Groups   Flyktinggruppernas Riksråd (Sweden)
<b>JRS</b>	Jesuit Refugee Service
<b>LFIP</b>	Law on Foreigners and International Protection (Turkey)
<b>NGO(s)</b>	Non-governmental organisation(s)
<b>OAU</b>	Organisation of African Unity
<b>OFPRA</b>	French Office for the Protection of Refugees and Stateless Persons   Office français de protection des réfugiés et apatrides (France)
<b>SCIFA</b>	Strategic Committee on Immigration, Frontiers and Asylum (Council configuration)
<b>SEM</b>	State Secretariat for Migration (Switzerland)
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Introduction

This report analyses Europe's two-tier system for the protection of those fleeing persecution or serious harm. Refugee protection has evolved considerably from the adoption of the 1951 Convention Relating to the Status of Refugees ("Refugee Convention")<sup>1</sup> to the development of bureaucratic, sophisticated asylum systems in its States Parties. The limitations of the Convention definition of the "refugee", heavily debated over the years,<sup>2</sup> have been addressed through different expansive approaches to protection across different parts of the globe. Both the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Protection in Africa 1969 and the 1984 Cartagena Declaration on Refugees have codified a wider interpretation of refugeehood so as to extend protection to persons facing generalised violence or events seriously disturbing public order in their country of origin,<sup>3</sup> on the same footing as those having a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, as outlined in Article 1A(2) of the Refugee Convention.

The European Union (EU), on the other hand, has created a two-tier protection regime. Its Common European Asylum System (CEAS) has developed a more elaborate framework relating to the scope of persons eligible for international protection, as well as the rights attached to their status. The 2004 Qualification Directive,<sup>4</sup> harmonising recognition standards across Member States and its 2011 recast,<sup>5</sup> extends beyond the remit of the Refugee Convention by setting out two forms of protection available under EU law: refugee status, for persons qualifying as refugees under the Convention definition, and subsidiary protection, for those who do not meet the criteria for refugeehood but face serious harm due to certain human rights violations in their country of origin.<sup>6</sup> Through this dual form of protection, the EU creates a complementary category of protected persons, legally and normatively distinct from refugees. This design breaks away from its own commitment to provide a "uniform asylum status, valid throughout the Union",<sup>7</sup> on one hand, and from other regional approaches which have extended the refugee definition, on the other.

Harmonised rules and equivalent protection standards are the central premises of the CEAS. The existence of common legislative frameworks, shared financial resources and practical cooperation supported by dedicated EU agencies, should ensure that people seeking protection are treated alike in every Member State of the European Union. This assumption has never been realised, however, and continues to be dispelled by the practice of asylum administrations across the continent to date. Despite two generations of harmonised legislative standards, European countries make widely different determinations as to who needs international protection, what form of protection is needed, and what rights should be attached thereto. The "asylum lottery" has been and remains an inherent flaw in the implementation of the CEAS.

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<sup>1</sup> Geneva, 28 July 1951, United Nations Treaty Series vol. 189, 137.

<sup>2</sup> See *inter alia* A Shacknove, 'Who is a Refugee?' (1985) 95:2 Ethics 274; JC Hathaway, 'Is Refugee Status Really Elitist An Answer to the Ethical Challenge?' in J-Y Carlier and D Vanheule (eds), *Europe and Refugees: A Challenge?* (Brill, 1997).

<sup>3</sup> See Article 1(2) Organisation of African Unity Convention Governing the Specific Aspects of Refugee Protection in Africa, Addis Ababa, 10 September 1969; Para III(3) Cartagena Declaration on Refugees, Cartagena, 22 November 1984.

<sup>4</sup> 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, *OJ* 2004 L304/12.

<sup>5</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), *OJ* 2011 L337/9.

<sup>6</sup> See Article 15 recast Qualification Directive.

<sup>7</sup> Article 78(2)(a) TFEU.

Part of the problem lies in the design of international protection at EU level. The Qualification Directive has introduced two classes of protected persons and enables Member States to differentiate the rights and entitlements conferred upon them.<sup>8</sup> This two-tier approach to protection is based on the false assumption that subsidiary protection status addresses shorter-term protection needs compared to refugee status. The Commission itself has acknowledged in previous years that:

“When subsidiary protection was introduced, it was assumed that this status was of a temporary nature. As a result, the Directive allows Member States the discretion to grant them a lower level of rights in certain respects. However, practical experience acquired so far has shown that this initial assumption was not accurate. It is thus necessary to remove any limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified.”<sup>9</sup>

Far from shifting away from it, recent national practice reveals renewed efforts to reaffirm that very ill-fitted assumption. Extensive reforms across several Member States in the course of 2016 have lowered the level of rights conferred upon subsidiary protection holders compared to refugee status holders, often as far as EU law would allow. The difference in treatment between refugees and subsidiary protection beneficiaries therefore seems sharper than ever, while decision-making patterns in practice continue to create ambiguity as to when one status or the other should be granted. As far as further EU harmonisation is concerned, the recent European Commission proposal for a Qualification Regulation, repealing the existing Directive and eliminating discretion as regards most rules on the granting of protection, seeks to entrench those inequalities of treatment.<sup>10</sup>

Against this backdrop, this Thematic Report documents the evolution of legal frameworks and practice regarding protection statuses granted in Europe and the rights available to their holders. The contents of this report draw on desk research, in particular the latest update of the Asylum Information Database (AIDA) country reports, which for the first time cover the content of protection and integration of beneficiaries of international protection across 20 European countries. Statistical information on the practice of other countries such as Finland and Norway is also provided where available.

The report is structured in two chapters:

- ❖ **Chapter I** provides a statistical overview of asylum practice in 2016, looking at applications, main countries of origin, first instance decisions, overall recognition rates and status granted to those seeking protection;
- ❖ **Chapter II** analyses the differentiation in content of protection afforded to refugees and beneficiaries of subsidiary protection across a number of selected rights, namely: residence, travel documents, family reunification and access to nationality;
- ❖ **Chapter III** provides insights into the debate in the light of the ongoing reform triggered by the 2016 proposal for an EU Qualification Regulation.

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<sup>8</sup> See e.g. residence permits (Article 24), travel documents (Article 25) and social welfare (Article 29).

<sup>9</sup> European Commission, *Proposal for a [recast Qualification Directive] – Explanatory Memorandum*, COM(2009) 551, 21 October 2009, 8.

<sup>10</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents* (hereafter “proposal for a Qualification Regulation”), COM(2016) 467, 13 July 2016. See also ECRE, *Comments on the Commission proposal for a Qualification Regulation*, November 2016, available at: <http://bit.ly/2fDiAu6>, 16.



Statistics on asylum applications and decisions in EU Member States and Schengen Associated States countries are made available by Eurostat pursuant to the Migration Statistics Regulation.<sup>11</sup> National authorities also publish statistical reports in most European countries, some more detailed and timely than others, which may diverge from figures provided to Eurostat.<sup>12</sup>

On the basis of statistical information made available so far by national authorities and Eurostat and/or collected by civil society organisations, this chapter provides a summary of key European trends in relation to the number of people seeking protection in the continent, the number of persons protected and the forms of international protection granted, with the aim of illuminating national approaches to the two-tier protection regime underlying asylum in Europe. Detailed statistical information may be found in the form of tables in the [Annexes](#) to this report.

### 1. Asylum applications

#### *Numbers of asylum seekers remain steady*

Despite the sharp reduction in arrivals to Europe in 2016 following a series of national and EU-led restrictions on access to protection, registration of asylum claims made by those entering over the past two years has continued to result in high numbers of official applications.

**Germany**, by far the main destination country last year, registered as many as 745,545 asylum applications in 2016.<sup>13</sup> Only about 280,000 of those concerned new arrivals, however, while the remainder were formal registrations of protection claims expressed in 2015.<sup>14</sup> Despite a large influx of about 890,000 arrivals, only 476,649 people registered asylum applications in 2015.<sup>15</sup> Until they were formally registered as applicants for international protection, people seeking asylum received a certificate of “reporting as an asylum seeker” (BÜMA). Only five months after it had been formally introduced in legislation, the BÜMA was replaced by the “arrival certificate” (*Ankunftsnachweis*) in March 2016, to be issued to asylum seekers reporting in initial reception centres. While it is not yet fully clear what legal status is applicable to asylum seekers before they report in these centres, this no longer seems to raise serious problems in practice. The decrease in arrivals, coupled with the opening of new offices and “arrival centres” to process applicants, has in fact allowed the Federal Office for Migration and Refugees (BAMF) to resolve the backlog of unregistered applications in 2016.<sup>16</sup>

Ever more sharply than before, the reception of asylum seekers in Europe is spearheaded by Germany. Yet an increase in asylum applications, often exponential compared to the number of claims registered in 2015, has also been reported in other countries. **Italy** and **France** have also been among the top destinations for asylum seekers, receiving 123,482 and 85,244 applications respectively.<sup>17</sup> **Turkey** marked a slight increase with 66,167 applications registered with the Directorate-General for Migration

<sup>11</sup> Regulation (EC) No 862/2007 of 11 July 2007 on Community statistics on migration and international protection, OJ 2007 L199/23.

<sup>12</sup> For a discussion, see ECRE, *Asylum Statistics in the European Union: A need for numbers*, AIDA Legal Briefing No 2, August 2015, available at: <http://bit.ly/2kGIEKn>.

<sup>13</sup> BAMF, *Asylum statistics: December 2016*, available in German at: <http://bit.ly/2ijhKIV>.

<sup>14</sup> German Ministry of Interior, ‘280.000 Asylsuchende im Jahr 2016’, 11 January 2017, available in German at: <http://bit.ly/2jugEH7>.

<sup>15</sup> BAMF, *Asylum statistics: December 2015*, available in German at: <http://bit.ly/2l2irDZ>.

<sup>16</sup> AIDA, Country Report Germany, 2016 Update, March 2017, available at: <http://bit.ly/2mRjN2L>, 17-18.

<sup>17</sup> AIDA, Country Report Italy, 2016 Update, February 2017, available at: <http://bit.ly/2maTfMw>; Country Report France, 2016 Update, February 2017, available at: <http://bit.ly/2lPwbCv>, 9.

Management (DGMM), although tens of thousands of asylum seekers continued to apply for protection with the United Nations High Commissioner for Refugees (UNHCR) in 2016.<sup>18</sup>

**Greece** received 51,091 applicants and saw a nearly fourfold increase in the number of applications registered compared to previous years, while **Croatia** received 2,243 asylum seekers in 2016, more than a tenfold increase compared to 211 registered in 2015.<sup>19</sup>

Most other countries remain far behind **Germany** and reported a decrease in the number of asylum applications registered last year. In **Sweden**, for example, the Swedish Migration Agency has drawn a link between the introduction of internal border controls since December 2015 and a dramatic decrease in the number of asylum seekers from over 162,000 in 2015 to 28,939 last year.<sup>20</sup> This has fostered further support for border controls by the Swedish Migration Agency.<sup>21</sup>

The number of asylum applications registered across Europe has understandably led to significant backlogs for asylum authorities. The European Asylum Support Office (EASO) reported an overall backlog of 874,693 cases at the end of the year,<sup>22</sup> down from over a million in the summer of 2016.<sup>23</sup> Almost half of these cases were reported in **Germany**, with as many as 433,719 pending applications at the end of the year,<sup>24</sup> followed by 99,920 in **Italy** and 71,576 in **Sweden**.<sup>25</sup>

### *Main countries of origin*

As detailed in *Annex I* to this report, the main nationalities of asylum seekers in 2016 have largely remained those associated with the “refugee crisis” at the end of 2015.<sup>26</sup> Persons originating from Syria, Afghanistan and Iraq have remained the principal nationalities in the majority of European countries:

1. **Syria** was among the top three nationalities of asylum seekers in Germany, Greece, Austria, Hungary, Sweden, Switzerland, Netherlands, Bulgaria, Belgium, Spain, Finland, Norway, Cyprus, Croatia, Ireland, Malta, Slovenia, Serbia;
2. **Afghanistan** was among the top three nationalities of asylum seekers in Germany, France, Austria, Hungary, Sweden, Switzerland, Bulgaria, Belgium, Finland, Norway, Croatia, Slovenia, Serbia;
3. **Iraq** was among the top three nationalities in Germany, Greece, Austria, UK, Sweden, Bulgaria, Belgium, Finland, Croatia, Slovenia, Serbia.

The similarities in the nationality profiles of cases handled by most European asylum authorities in 2016 are important to highlight, as they give an indication of the extent to which national authorities should converge or not in the interpretation of criteria for granting international protection under the recast

<sup>18</sup> Compared to an active caseload of 212,200 asylum seekers at the end of 2015 (<http://bit.ly/2mRr7RI>), UNHCR counted an active caseload of 245,773 asylum seekers at the end of 2016 (<http://bit.ly/2m9Shyu>). It could therefore be inferred that at least 33,573 persons have applied with UNHCR in Turkey in 2016.

<sup>19</sup> AIDA, Country Report Greece, 2016 Update, March 2017, available at: <http://bit.ly/2nwd9nA>, 8; Country Report Croatia, 2016 Update, March 2017, available at: <http://bit.ly/2n45FJn>, 7.

<sup>20</sup> Lag (2015:1073) om särskilda åtgärder vid allvarlig fara för den allmänna ordningen eller den inre säkerheten i landet, available in Swedish at: <http://bit.ly/2jMxseu>. See also AIDA, Country Report Sweden, 2016 Update, March 2017, available at: <http://bit.ly/2IKGF9G>, 16-17.

<sup>21</sup> *Ibid.*

<sup>22</sup> EASO, *Latest asylum trends: December 2016*, available at: <http://bit.ly/2jEU4zl>.

<sup>23</sup> EASO, *Latest asylum trends: August 2016*, available at: <http://bit.ly/2kWHaZW>.

<sup>24</sup> BAMF, *Key asylum figures 2016*, available in German at: <http://bit.ly/2llpqjJ>.

<sup>25</sup> AIDA, Country Report Italy, 7; Country Report Sweden, 7.

<sup>26</sup> See e.g. on the treatment of these nationalities along the Western Balkan route, ECRE, ‘Western Balkan Brief: Refugees waiting day and night in snowy winter conditions’, 8 January 2016, available at: <http://bit.ly/2lwKHS1>.

Qualification Directive or relevant national legislation. A considerable part of Europe's caseload concerns applicants often fleeing similar countries and circumstances.

Beyond the aforementioned three countries, however, some European countries have mainly dealt with applications from other nationalities. Asylum seekers from **Eritrea** have remained in the top three countries of origin in Switzerland, Norway, the Netherlands and Malta. On the other hand, France has received applications mainly from nationals of **Sudan** and **Haiti** in 2016, Italy from nationals of **Nigeria**, **Pakistan** and **Gambia**, and Poland from nationals of **Russia**, **Ukraine** and **Tajikistan**.

## 2. First instance asylum decisions

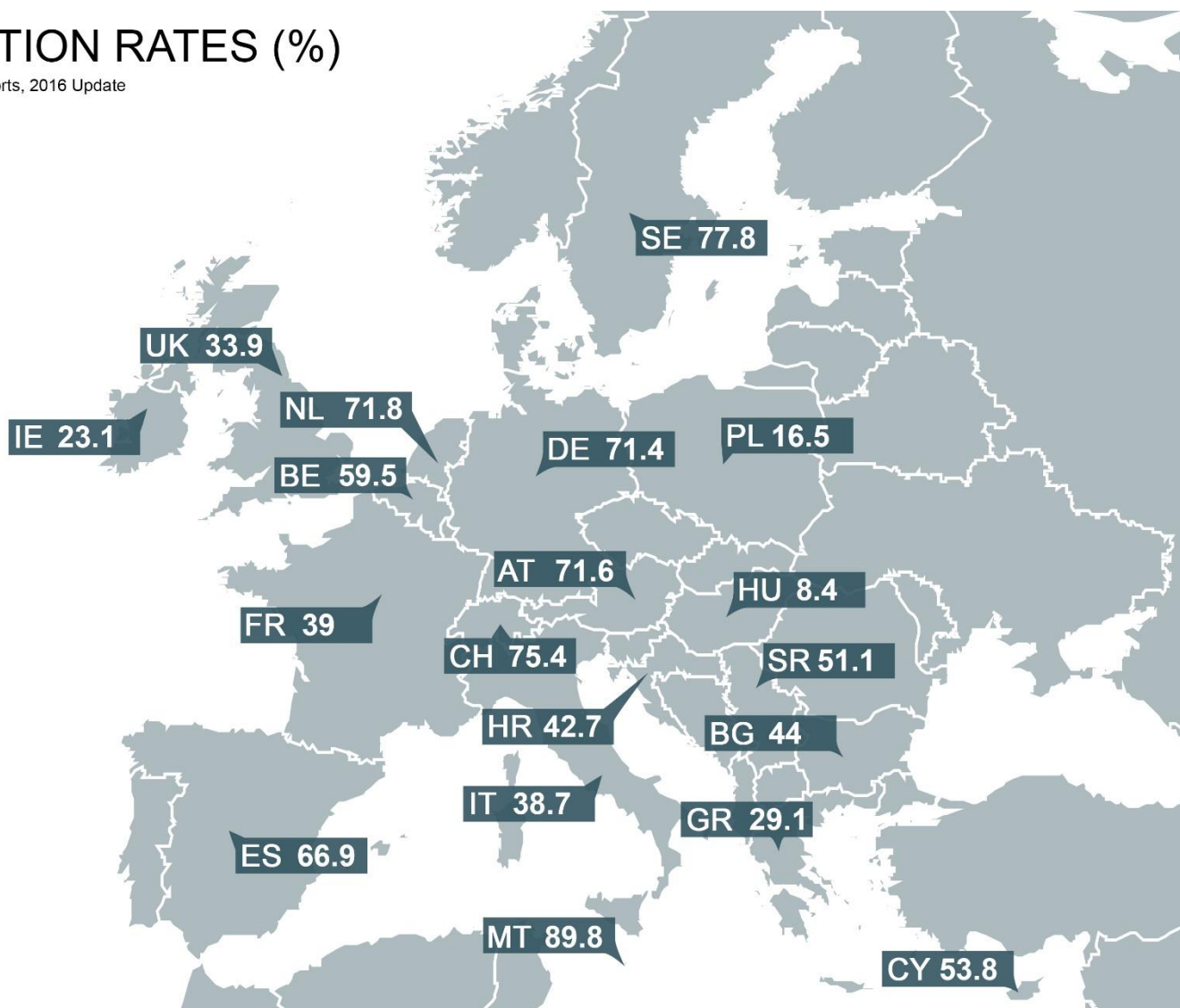
### *How many were protected? Persisting disparities*

Recognition rates, i.e. rates of decisions granting refugee status, subsidiary protection or national status on humanitarian grounds out of the total number of cases processed, have remained relatively high across Europe in 2016, in particular given the fact that the majority of countries have mainly received nationals of countries facing conflicts and instability. Still in 2016, however, overall recognition rates vary significantly from one country to another:

## RECOGNITION RATES (%)

Source: AIDA, Country Reports, 2016 Update

### 2016



In 2016, the Council of the EU noted that considerable differences “persist between Member States in terms of the outcome of procedures, the recognition rates and the international protection status granted” and supported steps towards uniform country of origin information (COI), while inviting EASO to do more work in this area.<sup>27</sup> As implied by the Council, wide disparities in recognition rates have underpinned European practice even for the same countries of origin.

The Council Conclusions on convergence in asylum decision practices adopted on 22 April 2016 selected Afghanistan as a “pilot exercise in common policy development based on an established common COI report” to ensure uniform approaches to Afghan asylum seekers. EASO has produced COI reports on the security situation in the country throughout the year,<sup>28</sup> while substantial and heavily criticised political efforts from the EU and individual Member States have aimed at promoting returns to Afghanistan.<sup>29</sup> This concerted approach to those fleeing Afghanistan has translated into a sharp drop in recognition rates over the past year, with the exception of slightly rising rates in **Italy** and **France**. Yet disparities from one country to another have persisted:

Afghanistan protection rates in Europe: 2015-2016		
Country	2015 rate	2016 rate
Italy	95.6%	97%
Switzerland	92.1%	89.4%
France	80.9%	82.4%
Germany	72.2%	55.8%
Austria	78.4%	54.9%
Greece	60.5%	48.8%
Sweden	54.5%	45%
Finland	71.6%	42.4%
Netherlands	52.9%	34.8%
Norway	82.2%	30%
Hungary	18.6%	6.1%
Bulgaria	5%	2.5%

Source: Annex IV.

Despite continued efforts towards convergence, the treatment of Afghan asylum seekers in Europe is highly dependent upon the country of destination, as recognition rates vary from 2.5% to 97% across the continent. While the decrease in protection rates in relative terms has been dramatic in **Finland** and **Norway**, protection for Afghan nationals in absolute terms has dropped to worryingly low levels in **Hungary** and **Bulgaria**. The latter has treated Afghans as a manifestly unfounded nationality in 2016, though their claims were still processed in a regular procedure.<sup>30</sup>

<sup>27</sup> Council of the European Union, *Council conclusions on convergence in asylum decision practices*, 8210/16 ASIM 58, 22 April 2016, available at: <http://bit.ly/2kNyrZl>.

<sup>28</sup> EASO, *Afghanistan: Security situation*, November 2016, available at: <http://bit.ly/2g1aiQn>.

<sup>29</sup> EU-Afghanistan Joint Way Forward on migration issues, 2 October 2016, available at: <http://bit.ly/2e3cgw9>.

<sup>30</sup> AIDA, Country Report Bulgaria, 2016 Update, February 2017, available at: <http://bit.ly/2lw71fy>, 42.

On the other hand, nationalities such as Iraq have been subject to an equally critical “asylum lottery”:

Iraq protection rates in Europe: 2016		
Country	Decisions taken	Recognition rate
Spain	80	100%
Poland	20	100%
Italy	920	95%
Malta	17	94.5%
Ireland	40	87.5%
France	2,540	81.6%
Cyprus	48	81.2%
Austria	3,230	80.6%
Germany	68,562	77.3%
Greece	:	66.5%
Croatia	35	60%
Switzerland	598	59.4%
Belgium	6,072	54.3%
Netherlands	2,030	48.2%
Sweden	10,135	45.5%
Finland	16,308	24.1%
Bulgaria	352	21%
Norway	2,290	18.4%
Hungary	556	13%
UK	2,948	12.5%

Source: [Annex V](#).

Against the backdrop of persisting inequalities in asylum procedure outcomes, the European Commission has sought measures to promote convergence by reforming the criteria for granting protection under the proposed Qualification Regulation.<sup>31</sup> The proposal aims to remove discretion as to the application of certain provisions of the current Qualification Directive, for instance to oblige Member States to apply the “internal flight alternative” so as to refuse protection to those who are considered able to find safety in other parts of their home country. The rationale behind such a measure is highly questionable, given that the interpretation of the concept of internal flight alternative too reveals broad discrepancies between different Member States.<sup>32</sup>

### *Forms of protection granted*

The “asylum lottery” in Europe not only concerns who gets protection and who ought to be returned, but also what type of protection is awarded to those in need. The April 2016 Council Conclusions on convergence conceded that divergences between Member States also exist with regard to the choice between refugee status and subsidiary protection when deciding on applications.<sup>33</sup> Disparities between European countries in the form of international protection granted have remained no less potent in 2016 compared to previous years. Despite common standards set out in the recast Qualification Directive

<sup>31</sup> European Commission, *Proposal for a Qualification Regulation*, COM(2016) 467, 13 July 2016.

<sup>32</sup> See ECRE, *Comments on the Commission proposal for a Qualification Regulation*, November 2016, 7.

<sup>33</sup> Council of the European Union, *Council conclusions on convergence in asylum decision practices*, 8210/16 ASIM 58, 22 April 2016.

binding EU Member States, and inspiring national legislation in accession countries such as Serbia and Turkey, different countries have continued to grant different statuses to those seeking protection. This has been the case even for decisions concerning the same nationality:

Type of international protection granted per main countries of origin: 2016			
Nationality	Mostly refugee status	Mostly subsidiary protection	Both statuses
Syria	AT, BE, IT, PL, UK, IE	ES, SE, MT, CY, HU	DE, FR, NL, BG, CH, HR
Afghanistan	UK, HR, IE	FR, IT, CH, SR	AT, BE, DE, SE, ES, NL
Iraq	BE, FR, DE, MT, HR, IE, SR	IT, ES, NL, HU, CH, PL, CY	AT, SE, BG, NL

Source: Annexes III to V.

For example, refugee status rates for Syrians have varied across a range from 100% in **Ireland** and 92% in the **UK** and **Italy** to no more than 0.9% in **Spain**, the latter overwhelmingly granting subsidiary protection.

The tension between refugee status and subsidiary protection has been particularly acute in the case of **Germany**, where the trend of predominantly refugee status grants in 2015 changed dramatically in 2016.<sup>34</sup> Namely Syrians, who had a mere 0.06% subsidiary protection rate in 2015,<sup>35</sup> witnessed a subsidiary protection rate of 42% in 2016. This has led to increasing “upgrade appeals” by subsidiary protection holders against refusals of refugee status, in which most German Administrative Courts and High Administrative Courts have accepted that Syrians were entitled to refugee status.<sup>36</sup> A total 44,228 appeals were filed by Syrian nationals between January and November 2016, most of which can be assumed to have questioned the grant of subsidiary protection instead of refugee status.<sup>37</sup> During that period, the German Administrative Courts granted refugee status in 4,785 cases, while rejecting 685 appeals.<sup>38</sup> **Bulgaria** has also followed a similar trend relating to Syrians: the subsidiary protection rate rose from 14.8% in 2015 to 40.8% in 2016.<sup>39</sup>

A different shift in practice has occurred with regard to resettled Syrians in the **UK**. Until now, whereas Syrian nationals applying for asylum in the UK largely receive refugee status, those resettled under the Vulnerable Persons Resettlement Scheme and the Vulnerable Children Resettlement Scheme automatically receive “humanitarian protection” (subsidiary protection). The Home Office has announced a policy change taking effect on 1 July 2017 to grant refugee status to resettled Syrians.<sup>40</sup>

Asylum statistics for 2016 are highly illustrative of the scale of Europe’s persisting protection lottery, dispelling the promise of equivalent international protection standards under the CEAS. They shed light

<sup>34</sup> Positive decisions by the BAMF for all nationalities shifted from 137,136 refugee status (55%) and 1,707 subsidiary protection (0.7%) in 2015, to 256,136 refugee status (42.1%) and 153,700 subsidiary protection (25.3%) in 2016.

<sup>35</sup> BAMF, *Asylum statistics: December 2015*, available in German at: <http://bit.ly/2l2irDZ>.

<sup>36</sup> For an overview, see Informationsverbund Asyl und Migration, ‘Erste OVG Entscheidungen zum Schutzstatus von Asylsuchenden aus Syrien veröffentlicht’, 24 February 2017, available in German at: <http://bit.ly/2lOpfpn>; ‘Neue Gerichtsentscheidungen zum Schutzstatus Asylsuchender aus Syrien’, 25 August 2016, available in German at: <http://goo.gl/GHslcF>.

<sup>37</sup> German Federal Government, Reply to parliamentary question by The Left, 18/11262, 21 February 2017, available in German at: <http://bit.ly/2mk6Qkd>, 63.

<sup>38</sup> *Ibid.*

<sup>39</sup> See Eurostat, migr\_asydcfsta; AIDA, Country Report Bulgaria, 6.

<sup>40</sup> United Kingdom Parliament, Syrian Vulnerable Persons Resettlement Scheme and Vulnerable Children’s Resettlement Scheme – Arrangements: Written statement - HLWS553, 22 March 2017, available at: <http://bit.ly/2m5kgOJ>. See Refugee Council, ‘Government finally recognises resettled Syrians as refugees’, 22 March 2017, available at: <http://bit.ly/2nRqBjT>.

on the inherent limitations of legislative harmonisation and practical cooperation as means of approximating decision-making patterns and outcomes among asylum authorities across the continent. More importantly, however, Europe's protection lottery has severe repercussions on the rights and integration prospects of people granted status.

Differences in the status granted have direct and far-reaching impact on the lives of beneficiaries of international protection, given that they entail a widely different set of rights between refugees and subsidiary protection holders in some countries. The recast Qualification Directive and other instruments of the EU *acquis*, such as the Family Reunification Directive, allow Member States to distinguish the treatment of refugees and subsidiary protection beneficiaries on the assumption that the latter have less durable protection needs. On that basis, many countries have opted for subjecting holders of subsidiary protection to less preferential treatment with regard to a range of entitlements crucial to securing their integration in host societies.

Drawing from information provided for the first time in the 20 AIDA country reports, this section explores practices of unequal treatment between the two tiers of international protection through selected rights.

### 1. Duration of residence

As detailed elsewhere,<sup>41</sup> the recast Qualification Directive sets minimum rules on the duration of residence permits for international protection beneficiaries, which require permits of at least 3 years for refugees and at least 1 year for holders of subsidiary protection. 21 out of 28 EU Member States have followed a two-tier approach with regard to residence permits and grant less security of residence to persons benefitting subsidiary protection, while such a difference is also drawn in Switzerland and Serbia.

In certain countries, the distinction in residence rights is dramatic. In **France**, refugees receive a residence permit (*carte de résident*) valid for 10 years, while subsidiary protection beneficiaries are only entitled to residence for 1 year based on a *Carte de séjour vie privée et familiale*, renewable for 2-year periods.<sup>42</sup> Disparities in the provision of residence permits are drawn even within the category of beneficiaries of subsidiary protection, since the French Office for the Protection of Refugees and Stateless Persons (OFPRA) has drawn a distinction between “Type 1” subsidiary protection for persons unable to request documentation from their country of origin, and “Type 2” for those deemed able to do so. In some cases, “Type 2” beneficiaries of subsidiary protection are not in a position to obtain a residence permit if they are not able or willing to contact the authorities in their home country to obtain identity documents.<sup>43</sup> OFPRA is set to establish a uniform policy on residence permits for all subsidiary protection beneficiaries to remedy this gap.<sup>44</sup>

The status of international protection granted after an asylum procedure becomes all the more crucial given that the duration of a residence permit for asylum reasons cannot be appealed *per se*, even though the type of status granted can be appealed, as recalled by the **Swedish** Migration Court of Appeal in January 2017.<sup>45</sup>

### 2. Travel documents

The issuance of travel documents to beneficiaries of international protection is also underpinned by distinctions between the two statuses. Research across the AIDA countries illustrates greater barriers

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<sup>41</sup> ECRE, *Asylum on the clock? Duration and review of international protection status in Europe*, AIDA Legal Briefing No 6, June 2016, available at: <http://bit.ly/2jFNk44>.

<sup>42</sup> AIDA, Country Report France, 114.

<sup>43</sup> *Ibid.*, 115.

<sup>44</sup> *Ibid.*

<sup>45</sup> Migration Court of Appeal, MIG 2017:1, UM9122-16, 18 January 2017, available at: <http://bit.ly/2jyj19t>.



on subsidiary protection beneficiaries with regard to the conditions for obtaining a travel document from the Member State granting protection.<sup>46</sup> That is due to the recast Qualification Directive condition that the person is unable to obtain a travel document from his or her country of origin,<sup>47</sup> which has been transposed by the majority of countries.

Beyond the EU, **Switzerland** distinguishes refugees from temporarily admitted persons even more sharply, insofar as the latter have no automatic right to a travel document. In addition to proving that they are unable to obtain travel documents from their home country, they must also obtain a return visa allowing them to re-enter Switzerland, which is only issued under specific circumstances.<sup>48</sup>

In **Turkey**, on the other hand, an automatic right to a travel document is not provided for “conditional refugees” i.e. non-European refugees who are subject to Turkey’s geographical limitation on the Convention, or subsidiary protection beneficiaries. These persons may only apply for a “passport with a foreign-nationals-only stamp” (*Yabancılarla Mahsus Damgalı Pasaport*), which is issued at the discretion of the Directorate-General for Migration Management (DGMM).<sup>49</sup> To date, no such passports have been issued to international protection beneficiaries, to the knowledge of Refugee Rights Turkey.<sup>50</sup> Similar rules apply to the issuance of travel documents for Syrians under the Temporary Protection Regulation.<sup>51</sup> While the organisation is not aware of cases where such travel documents have been issued, in practice there are cases of temporary protection beneficiaries being allowed to travel on their Syrian passports to third countries, although in some cases they have faced difficulties re-entering Turkey.<sup>52</sup>

The format and duration of travel documents also differs based on the status of protection granted. As a result, beneficiaries of subsidiary protection are issued documents of shorter validity compared to recognised refugees, with the exception of 8 countries (**Austria, Spain, Greece, the Netherlands, Hungary, Belgium, Italy and Malta**).<sup>53</sup>

### 3. Family reunification

The right to family life is ubiquitous in international and European legal standards and a necessary prerequisite to any meaningful effort towards settlement in a host society. In the light of its importance as a core component of livelihood and integration, ECRE has paid particular attention to the legal principles and practice of family reunification across Europe in previous years.<sup>54</sup> In the aftermath of large-scale arrivals in Europe in 2015, however, the year 2016 was marked by national measures aimed at restricting family reunification channels for those granted protection. Recent legislative reforms in countries such as **Austria, Germany, Sweden, Hungary, Ireland, Denmark or Finland** have imposed stricter conditions on the enjoyment of family reunification.

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<sup>46</sup> ECRE, *Unravelling travelling: Travel documents for beneficiaries of international protection in Europe*, AIDA Legal Briefing No 8, October 2016, available at: <http://bit.ly/2eMK2WH>.

<sup>47</sup> Article 25(2) recast Qualification Directive.

<sup>48</sup> Such as severe illness or death of family members and close relatives; cross-border school trips; to participate in sports or cultural events abroad or for humanitarian reasons: AIDA, Country Report Switzerland, 2016 Update, February 2017, available at: <http://bit.ly/2kE4LCH>, 95-96.

<sup>49</sup> Article 84(2) Turkish Law on Foreigners and International Protection, referring to Article 14 Turkish Law on Passports.

<sup>50</sup> ECRE, *Unravelling travelling*, October 2016, 4.

<sup>51</sup> Article 43 Turkish Temporary Protection Regulation.

<sup>52</sup> ECRE, *Unravelling travelling*, October 2016, 4.

<sup>53</sup> In the **UK**, the difference depends on whether the beneficiary has indefinite leave or not.

<sup>54</sup> See e.g. ECRE and Red Cross EU, *Disrupted flight: The realities of separated refugee families in the EU*, November 2014, available at: <http://bit.ly/2m0BjqL>; ECRE/ELENA, *Information Note on family reunification for beneficiaries of international protection in Europe*, June 2016, available at: <http://bit.ly/2hdP9Ug>.

The effective exercise of the right to family reunification is still a vivid illustration of the “asylum lottery” prevailing in Europe, leading to unfair, often arbitrary, separation of families. The wide divergence of family reunification standards is partly owed to the ambiguity of EU law. The Family Reunification Directive does not squarely cover refugees and beneficiaries of subsidiary protection alike, as it does not apply to persons “authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States”.<sup>55</sup> However, since the Directive predates the first iteration of the Qualification Directive in 2004, it is doubted that the aforementioned wording was intended to exclude the EU status of subsidiary protection. The humanitarian rationale of the Directive and the European Commission’s 2014 guidance also militates in favour of equal treatment of the two categories of protected persons.<sup>56</sup> Nevertheless, this ambiguity has translated into visibly lower protection standards for those granted subsidiary protection.

Several countries have excluded subsidiary protection beneficiaries from the right to family reunification, contrary to the Commission’s 2014 guidance.<sup>57</sup> **Greece, Cyprus** and **Malta** fully exclude beneficiaries of subsidiary protection from the right to family reunification.<sup>58</sup> This is now also the case in **Sweden** following the entry into force of the temporary law from July 2016 to July 2019.<sup>59</sup> The exclusion of beneficiaries of subsidiary protection from family reunification affects only those applying for asylum after 24 November 2015. **Germany** has recently excluded subsidiary protection holders from family reunification from March 2016 to March 2018, only eight months after granting them equal footing to refugees in terms of preferential conditions for reuniting with family members.<sup>60</sup> This exclusion was described by the government as necessary “to safeguard the integration of those people who are moving to Germany [under family reunification rules].”<sup>61</sup>

Beyond these cases, at least four countries (**Austria, Hungary, Switzerland, Serbia**) afford some form of preferential treatment to refugees in relation to the different temporal and material criteria for family reunification, compared to subsidiary protection holders. These concern in particular: (1) waiting periods before an application may be submitted; (2) maximum deadlines for submitting an application; and (3) material requirements such as income, accommodation and health insurance.

### *Minimum waiting periods*

At EU level, the Family Reunification Directive allows for minimum waiting periods of up to 2 years prior to a family reunification application,<sup>62</sup> but prohibits those in the case of recognised refugees.<sup>63</sup> Against this backdrop, a number of countries have established waiting periods before an application for family reunification may be submitted, usually but not exclusively affecting subsidiary protection beneficiaries:

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<sup>55</sup> Article 3(2)(c) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *OJ* 2003 L251/12. See ECRE/ELENA, *Information Note on family reunification*, para 23. See also European Commission, *Guidance on the application of Directive 2003/86/EC on the right to family reunification*, COM(2014) 210, 24.

<sup>56</sup> Recital 8 Family Reunification Directive. See ECRE/ELENA, *Information Note on family reunification*, para 23; European Commission, *Guidance on the application of Directive 2003/86/EC on the right to family reunification*, COM(2014) 210, 3 April 2014, 24.

<sup>57</sup> European Commission, *Guidance on the application of Directive 2003/86/EC on the right to family reunification*, COM(2014) 210, 3 April 2014, 24.

<sup>58</sup> AIDA, Country Report Greece, 140; Country Report Cyprus, 2016 Update, March 2017, available at: <http://bit.ly/2mEU8zB>, 92; Country Report Malta, 2016 Update, February 2017, available at: <http://bit.ly/2n5RU95>, 66.

<sup>59</sup> AIDA, Country Report Sweden, 68.

<sup>60</sup> AIDA, Country Report Germany, 89.

<sup>61</sup> Federal Government, Response to parliamentary question by The Left, No 18/9992, 17 October 2016, 5:

<sup>62</sup> Article 8 Family Reunification Directive.

<sup>63</sup> Article 12(2) Family Reunification Directive.

in the case of subsidiary protection in **Austria**, “temporary subsidiary protection” in **Denmark**,<sup>64</sup> and temporary admission in **Switzerland**, subsidiary protection holders must wait 3 years before applying for family reunification. In **Malta**’s case, a one-year waiting period is imposed on refugees, contrary to the Directive.

The imposition of waiting periods before a family reunification application may be submitted seems to have a clear impact on the volume of applications submitted by different categories of protected persons. In 2016, **Switzerland** received 1,667 family reunification applications from refugees but only 286 from temporarily admitted persons.<sup>65</sup>

**France**, the **Netherlands**, **Bulgaria**, **Croatia**, **Hungary**, **Italy**, **Poland**, **Sweden** and the **UK** do not apply a minimum waiting period before allowing beneficiaries to apply for family reunification.<sup>66</sup>

### *Deadlines for submitting an application*

Some countries have laid down a deadline following the grant of international protection for applying for family reunification in order to be exempt from material conditions, applicable to both refugees and subsidiary protection beneficiaries. In the **Netherlands**, this time limit is 3 months,<sup>67</sup> whereas in **Poland** it is 6 months,<sup>68</sup> and in **Belgium** and **Ireland** it is 12 months.<sup>69</sup> In **Germany**, **Sweden**, **Greece** and **Cyprus**, where only refugees are entitled to family reunification, the time limit is 3 months.<sup>70</sup>

In **Austria** and **Hungary**, such a deadline exists only for refugees, who must apply within 3 months of recognition if they wish to benefit from preferential treatment. Otherwise they must fulfil the material requirements applicable to subsidiary protection beneficiaries.<sup>71</sup> The deadline of 3 months for submitting an application was introduced on 1 June 2016 in Austria, despite concern from civil society organisations around family members’ difficulties to access an Austrian embassy in person to file an application.<sup>72</sup>

On the contrary, **Switzerland** imposes a maximum deadline of 5 years on temporarily admitted persons, after their 3-year waiting period has passed. This is reduced to 1 year if family reunification concerns children over the age of twelve.<sup>73</sup> No deadline exists in **France**, **Bulgaria**, **Croatia**, **Italy** and the **UK**.

### *Material requirements*

The material conditions required for family reunification under the Family Reunification Directive are threefold: the sponsor must guarantee (a) accommodation regarded as normal for a comparable family

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<sup>64</sup> This is introduced as a new status in 2016 under Article 7(3) of the Danish Aliens Act, for cases corresponding to Article 15(c) of the recast Qualification Directive.

<sup>65</sup> AIDA, Country Report Switzerland, 94.

<sup>66</sup> AIDA, Country Report France, 119; Country Report Netherlands, 2016 Update, March 2017, available at: <http://bit.ly/2lI2TJK>, 79; Country Report Bulgaria, 66; Country Report Croatia, 80; Country Report Hungary, 2016 Update, February 2017, available at: <http://bit.ly/2k3zGE9>, 90; Country Report Italy, 108; Country Report Poland, 2016 Update, February 2017, available at: <http://bit.ly/2mM3Fp8>, 92; Country Report Sweden, 68; Country Report UK, 2016 Update, February 2017, available at: <http://bit.ly/2mLD1wl>, 95.

<sup>67</sup> AIDA, Country Report Netherlands, 79.

<sup>68</sup> AIDA, Country Report Poland, 92.

<sup>69</sup> AIDA, Country Report Belgium, 108; Country Report Ireland, 91.

<sup>70</sup> AIDA, Country Report Sweden, 68; Country Report Germany, 88-89; Country Report Greece, 140; Country Report Cyprus, 92.

<sup>71</sup> AIDA, Country Report Austria, 2016 Update, February 2017, available at: <http://bit.ly/2lBT7Yl>, 97; Country Report Hungary, 90.

<sup>72</sup> AIDA, Country Report Austria, 97.

<sup>73</sup> AIDA, Country Report Switzerland, 94.

in the same region, to meet the accommodation needs of the family; (b) sickness insurance; and (c) sufficient income to cover his or her own and the family's costs without recourse to social assistance.<sup>74</sup>

Refugees are expressly exempt from these requirements, although Member States are allowed not to apply the exemption if the refugee has not applied for family reunification within 3 months of recognition.<sup>75</sup>

Out of the countries allowing both categories of international protection beneficiaries to apply for family reunification, **Belgium** exempts both refugees and subsidiary protection beneficiaries if the application for family reunification is filed within 12 months.<sup>76</sup> Conversely, only refugees are exempted from fulfilling material conditions such as income, accommodation and health insurance in **Austria, Switzerland and Hungary**,<sup>77</sup> although in Austria and Hungary this exemption is conditional upon applying for family reunification within the aforementioned deadline. Material conditions are always applicable to beneficiaries of subsidiary protection / temporary admission, although Austria provides an exemption for unaccompanied children.

On the contrary, refugees are subject to requirements to prove accommodation, sufficient income and health insurance in **Malta**. Subsidiary protection beneficiaries are excluded from family reunification.<sup>78</sup>

No material requirements are foreseen in **France, Bulgaria, Croatia, Italy** and the **UK**.<sup>79</sup>

### *Status of family members*

In **Hungary**, only family members<sup>80</sup> of refugees may automatically be granted the same status as the sponsor, after submitting an application upon arrival to start the procedure. Family members of subsidiary protection beneficiaries are required to apply for asylum and prove their individual cases.<sup>81</sup>

Other countries such as the **Netherlands, Switzerland, Greece, Cyprus, Bulgaria, Croatia and Italy** generally allow family members to benefit from the status of the sponsor, regardless of the international protection status granted.<sup>82</sup> **Malta** also provides for a 3-year permit entitled "Dependant family member" which entitles holders to the same rights as those of the sponsor.<sup>83</sup>

Conversely, countries such as **France, Belgium, Sweden** the **UK** and **Germany** do not directly grant international protection to family members of either category of sponsor. Family members in France receive the same permit as the sponsor but not his or her status,<sup>84</sup> while Sweden grants a residence permit with the same duration as that of the sponsor,<sup>85</sup> Germany and Belgium grant a residence permit on family reunification grounds,<sup>86</sup> and the UK grants "leave in line" expiring at the end of the sponsor's leave.<sup>87</sup>

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<sup>74</sup> Article 7 Family Reunification Directive.

<sup>75</sup> Article 12(1) Family Reunification Directive.

<sup>76</sup> AIDA, Country Report Belgium, 108.

<sup>77</sup> AIDA, Country Report Austria, 97; Country Report Switzerland, 93; Country Report Hungary, 90.

<sup>78</sup> AIDA, Country Report Malta, 66.

<sup>79</sup> AIDA, Country Report France, 119; Country Report Bulgaria, 66; Country Report Croatia, 81; Country Report Italy, 108; Country Report UK, 95.

<sup>80</sup> The definition of "family members" in Section 2 of the Hungarian Asylum Act does not include siblings and adult children.

<sup>81</sup> AIDA, Country Report Hungary, 91.

<sup>82</sup> AIDA, Country Report Netherlands, 79; Switzerland, 94; Country Report Greece, 141; Country Report Cyprus, 94; Country Report Bulgaria, 67; Country Report Croatia, 81; Country Report Italy, 108-109.

<sup>83</sup> AIDA, Country Report Malta, 66.

<sup>84</sup> AIDA, Country Report France, 119.

<sup>85</sup> AIDA, Country Report Sweden, 69.

<sup>86</sup> AIDA, Country Report Germany, 90; Country Report Belgium, 109.

<sup>87</sup> AIDA, Country Report UK, 96.

#### 4. Acquisition of nationality

The Refugee Convention binds states to “make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings” for refugees.<sup>88</sup> Contrary to other rights, EU law stops short of regulating naturalisation conditions to avoid interfering with their “sovereign power... to define the detailed rules for the application of their nationality law.”<sup>89</sup> Hence the recast Qualification Directive remains silent on this right of beneficiaries of international protection.

In keeping with the principle enshrined in the Refugee Convention, many European countries have awarded preferential treatment to refugee status holders with regard to access to nationality. Yet, even though the integration rationale for faster naturalisation procedures should hold for all persons granted international protection, those granted subsidiary protection face much more restrictive conditions and procedures.

The central prerequisite for applying for nationality is a minimum period of residence in the country of refuge, defined at the discretion of each state. As a result, national legal frameworks not only vary considerably as regards waiting periods for naturalisation, but also in relation to the differentiation of refugees from subsidiary protection beneficiaries thereon:

Naturalisation: Minimum required residence period in years			
Country	Refugee status	Subsidiary protection	
Austria	●●●●●● 6	●●●●●●●●●●●●●●●●●●●● 15	
Belgium	●●●●● 5	●●●●● 5	
Bulgaria	●●● 3	●●●●● 5	
Cyprus	●●●●● 5	●●●●● 5	
Germany	●●●●●●●● 8	●●●●●●●● 8	
Spain	●●●●● 5	●●●●●●●●●●●● 10	
France	- 0	●●●●● 5	
Greece	●●● 3	●●●●●●● 7	
Croatia	●●●●●●●● 8	●●●●●●●● 8	
Hungary	●●● 3	●●●●●●●● 8	
Ireland	●●● 3	●●●●● 5	
Italy	●●●●● 5	●●●●●●●●●●●● 10	
Malta	●●●●●●●●●● 10	●●●●●●●●●●●● 10	
Netherlands	●●●●● 5	●●●●● 5	
Poland	●●●●●●●● 7	●●●●●●●● 8	
Sweden	●●●● 4	●●●●● 5	
UK	●●●●●● 6	●●●●●● 6	
Switzerland	●●●●●●●●●●●● 12	●●●●●●●●●●●●●● 12	

As demonstrated above, out of the 20 European countries covered by AIDA, only 8 (**Belgium, Cyprus, Germany, Croatia, Malta, Netherlands, UK and Switzerland**) provide for equal rules on minimum

<sup>88</sup> Article 34 Refugee Convention.

<sup>89</sup> See e.g. CJEU, Case C-135/08 *Rottmann*, Judgment of 2 March 2010, para 32.

periods of residence prior to requesting nationality. It should be mentioned, however, that stateless persons in **Sweden** are also subject to the shorter residence period of 4 years applicable to refugees.<sup>90</sup>

Some countries draw extremely sharp distinctions in the waiting periods imposed on the two categories of status holders: these can differ from 0 to 5 years in **France** or 6 to 15 years in **Austria**. Beyond the general rules on waiting periods, however, the two countries provide for exceptions or relaxed residence period requirements. **France** allows for a reduced time limit of 2 years instead of 5 for subsidiary protection beneficiaries who have graduated from a French college, who have rendered an exceptional service to the country or who can demonstrate particularly strong integration.<sup>91</sup> Similarly, **Austria** allows for a reduced residence period of 10 years instead of 15 for subsidiary protection beneficiaries who can prove language proficiency and/or integration efforts.<sup>92</sup> **Germany** also allows for the residence period to be reduced to 7 years where the person has successfully attended an integration course, or 6 years where the person has integrated particularly well into society.<sup>93</sup>

In other countries, however, the already onerous legal requirements may be interpreted more restrictively in practice. In **Malta**, for example, where the naturalisation procedure is at the discretion of the authorities in the absence of a written policy, applications from beneficiaries of subsidiary protection are usually not considered.<sup>94</sup> Other countries impose stricter administrative formalities on subsidiary protection beneficiaries to apply for naturalisation. Whereas the application fee for refugees in **Greece** is €100, a more prohibitive fee of €700 is required for beneficiaries of subsidiary protection.<sup>95</sup>

In **Switzerland**, on the other hand, the number of nationality grants in 2016 was far higher for refugee status than for temporary admission: only 5 temporarily admitted persons were naturalised, against 711 naturalised refugees.<sup>96</sup> Changes to the Act on Nationality entering into force on 1 January 2018 will further restrict possibilities for temporarily admitted persons to obtain Swiss nationality. While the general minimum residence period will be reduced from 12 years to 10, they will not be able to apply for nationality prior to obtaining a permanent residence permit, and only half the time spent under temporary admission will be counted for the purpose of the minimum residence period.<sup>97</sup>

Other conditions for acquisition of nationality such as documentation, language proficiency, passing of special examinations or integration courses tend to affect refugees and subsidiary protection beneficiaries alike in most European countries. Nevertheless, some countries treat refugees preferentially with regard to the fulfilment of such requirements. **Italy** allows refugees to provide an affidavit to prove their personal data, but not subsidiary protection holders.<sup>98</sup>

## 5. Other restrictions on rights

Further distinctions in the rights bestowed upon refugees and subsidiary protection beneficiaries are drawn in some European countries, which also attach far-reaching consequences to the “protection lottery”. Examples from AIDA countries include differential treatment in relation to access to the labour market and freedom of movement across the national territory.

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<sup>90</sup> AIDA, Country Report Sweden, 65.

<sup>91</sup> AIDA, Country Report France, 116.

<sup>92</sup> AIDA, Country Report Austria, 94.

<sup>93</sup> AIDA, Country Report Germany, 84-85.

<sup>94</sup> AIDA, Country Report Malta, 2016 Update, February 2017, 63-64.

<sup>95</sup> AIDA, Country Report Greece, 137.

<sup>96</sup> AIDA, Country Report Switzerland, 91.

<sup>97</sup> *Ibid*, 90; Swiss Federal Council, *Admission provisoire et personnes à protéger : analyse et possibilités d'action*, October 2016, available in French at: <http://bit.ly/2kDCJXU>, 17-18.

<sup>98</sup> AIDA, Country Report Italy, 105.

## Access to the labour market

**Belgium** grants refugees access to the labour market without requiring a work permit or a professional card, whereas these are required for subsidiary protection beneficiaries.<sup>99</sup> The issuance of a professional card is conditioned upon further requirements relating to the activity the subsidiary protection holder wants to pursue: the activity has to be compatible with the reason of stay in Belgium, not in a saturated sector and may not disrupt public order.<sup>100</sup>

**Switzerland** grants refugees an unconditional right to engage in gainful employment, whereas the right to employment of temporarily admitted persons until recently depended on a decision by the cantonal authorities. Nevertheless, this authorisation for employment has been abolished by a law adopted in December 2016 by the Parliament, which has also abolished the previously applicable special tax of 10% of the person's salary, additional to regular taxation.<sup>101</sup> It is not yet clear when this law will enter into force. It should also be noted that the rate of beneficiaries able to work effectively in employment was higher for temporarily admitted persons (30.3%) than for refugees (24%) at the end of 2016.<sup>102</sup>

As regards health care, **Switzerland** permits cantons to impose limitations on temporarily admitted persons' choice of insurers, physicians and hospitals, but not on refugees.<sup>103</sup>

## Freedom of movement and social welfare

While most European countries allow beneficiaries of international protection to freely settle in their territory, restrictions tend to be applied by federal systems such as **Germany**, **Austria** and **Switzerland**.

As of August 2016, **Germany** generally obliges refugees and beneficiaries of subsidiary protection to take up their place of residence within the Federal State in which their asylum procedure has been conducted. Furthermore, authorities can oblige them to take up place of residence in a specific municipality within the Federal State. The obligation to live in a certain place remains in force for three years, but it can be lifted for certain reasons (e.g. for family-related reasons or for education and employment purposes).

This approach slightly contrasts with practice in **Switzerland**, where refugees may freely move and settle across the canton that granted protection, but persons under temporary admission dependent on social assistance are not free to choose their place of residence, as this may be determined by the canton.<sup>104</sup> Although Switzerland is not bound by the recast Qualification Directive, it should be noted that the Court of Justice of the European Union has sanctioned in *Alo and Osso* the imposition of residence restrictions on subsidiary protection beneficiaries that are not imposed on refugees.<sup>105</sup>

**Austria** has also considered the possibility of applying residence restrictions on beneficiaries of international protection, to prevent a trend of beneficiaries settling in Vienna after obtaining their status.<sup>106</sup> Currently, differential treatment is applied with regard to the level of social assistance granted to the two statuses, on the basis of discretion left by Article 29(2) of the recast Qualification Directive. Subsidiary protection beneficiaries' access to social assistance benefits vary compared to those granted to refugees in most federal provinces. Social support under the needs-based minimum benefit

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<sup>99</sup> Country Report Belgium, 112.

<sup>100</sup> *Ibid*, 113.

<sup>101</sup> AIDA, Country Report Switzerland, 96-97.

<sup>102</sup> *Ibid*.

<sup>103</sup> Country Report Switzerland, 97.

<sup>104</sup> Country Report Switzerland, 95.

<sup>105</sup> CJEU, Joined Cases C-443/14 and C-444/14 *Alo and Osso*, Judgment of 1 March 2016, paras 28-37.

<sup>106</sup> Country Report Austria, 100.

system (*bedarfsorientierte Mindestsicherung*) given to refugees is not available to subsidiary protection holders in Burgenland, Salzburg, Styria and as of April 2016 Lower Austria.<sup>107</sup>

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<sup>107</sup> Country Report Austria, 99-100.



In spite of two rounds of legislative harmonisation and shared financial and administrative resources, the EU has not resolved sharp disparities relating both to the status granted to those in need of international protection and to the rights made available to them. On the one hand, people fleeing the same countries or circumstances may face widely different treatment depending on the country processing their claim: the same person could be granted refugee status in one country, subsidiary protection in another, or even have their claim refused in another.

On the other hand, the content of international protection in Europe is fragmented and highly country-dependent. Persons granted protection are faced with dramatic disparities vis-à-vis most rights and entitlements crucial to rebuilding a life and becoming part of their host society. Rules on the duration and renewal of residence permits, the issuance and validity of travel documents, the conditions for family reunification and the status of family members upon arrival, the residence periods required for an application for naturalisation, as well as access to the labour market, freedom of movement and social assistance, draw sharp, unjustified distinctions between refugee status and subsidiary protection. The artificial divide between the two statuses often results from national practice, but it is also grounded in the design of the CEAS as a two-tier protection system.

The current reform of the EU asylum *acquis* has brought these questions back to the negotiating table through a European Commission proposal to transform the current Qualification Directive into a Regulation. The intention of the Commission was to introduce more convergence between Member States by “setting uniform rules on the procedures and rights to be offered to beneficiaries of international protection... to reduce both undue pull factors and secondary movements.”<sup>108</sup>

### 1. The Commission’s shifting vision of a two-tier protection system

The Commission’s positions in 2016 clearly indicate a retraction of its earlier approach in favour of removing undue distinctions between refugee status and subsidiary protection. The 2009 Commission proposal recasting the Qualification Directive acknowledged that the initial assumption of subsidiary protection as being of a temporary nature was inaccurate, and that it was therefore “necessary to remove any limitations of the rights of beneficiaries of international protection which can no longer be considered as necessary and objectively justified.”<sup>109</sup> On the contrary, its April 2016 Communication stated an intention “to better clarify the difference between the refugee and the subsidiary protection status and differentiate further the respective rights attached to them.”<sup>110</sup> However, both the April 2016 Communication and the July 2016 Commission Proposal fail to explain why the abovementioned doubts on the initial assumption regarding the temporary nature of subsidiary protection are no longer valid today and omit any objective justification for the continued differentiation between both statuses.

Far from addressing the untenable two-tier regime of international protection, the Qualification Regulation proposal purports to make inequality of treatment mandatory. Article 26(1)(a) of the proposal refers to a binding period of validity of 3 years for refugee residence permits, renewable by 3-year periods. On the other hand, Article 26(1)(b) provides for a 1-year validity period for subsidiary protection residence permits, which would be renewable by 2-year periods. This architecture retains the

<sup>108</sup> European Commission, *Towards a reform of the CEAS and enhancing legal avenues to Europe*, COM(2016) 197, 6 April 2016, 10.

<sup>109</sup> European Commission, *Proposal for a [recast Qualification Directive]*, Explanatory Memorandum, COM(2009) 551 final, 21 October 2009, 8.

<sup>110</sup> European Commission, *Towards a reform of the CEAS and enhancing legal avenues to Europe*, COM(2016) 197, 6 April 2016, 10.

unjustifiable distinction between the two statuses, based on a false assumption that subsidiary protection is of more temporary nature than refugee status.<sup>111</sup> As revealed by the practice of asylum administrations across Europe in [Chapter I](#), the type of protection status granted does not connote less durable or compelling protection needs. Instead, groups of people fleeing the same conditions find themselves recognised under different statuses solely depending on the country that examines their claim.

Moreover, the Commission proposal further emphasises the temporary nature of international protection under EU law by introducing highly controversial provisions imposing an obligation on Member States to review the continued need for protection upon: the first renewal of the residence permit for refugees;<sup>112</sup> the first and second renewal for beneficiaries of subsidiary protection;<sup>113</sup> or whenever the EU Asylum Agency's analysis indicates a significant change in the country of origin of the beneficiary of international protection. The Commission presents the mandatory regular review of international protection status as a necessary measure to reduce the attractiveness of EU Member States as destination countries for refugees but again omits to present any evidence for such assumption. NGOs have warned against the adverse effects of such measures on the integration prospects of beneficiaries of international protection, as well as on the processing capacities of national administrations.<sup>114</sup>

Beyond the duration of residence permits, the Commission proposal maintains the onerous requirements for issuing travel documents to subsidiary protection holders under Article 27, as well as the existing possibility for Member States to exclude subsidiary protection holders from the right to social assistance except for "core benefits" under Article 34(2).

## 2. The EU co-legislators' positions on the Qualification Regulation

The distinction between rights bestowed upon refugees and subsidiary protection beneficiaries and the proposed mandatory review of status seem to be among the central points for the negotiation of the proposed Qualification Regulation. Whereas the intention of the Commission has been to further crystallise a two-tier protection system in EU law, early signs from co-legislators appear not to endorse its position. The draft report published by the European Parliament rapporteur on 21 February 2017 explains that:

"The logic of approximating the two protection status and further harmonisation guided the Rapporteur's policy choice in this report. The current practice in the Member States and the very concept of protection does not effectively provide grounds for the distinction between the two statuses. In particular the reality shows that the subsidiary protection is based on an unjustified assumption of more temporary nature of protection and limited in its effectiveness."<sup>115</sup>

To ensure a coherent approach to the rights afforded to beneficiaries of international protection, the draft report proposes an alignment between refugee status and subsidiary protection in a number of areas affected by the Qualification Regulation:

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<sup>111</sup> ECRE, *Comments on the Commission proposal for a Qualification Regulation*, November 2016, available at: <http://bit.ly/2fDiAu6>, 16.

<sup>112</sup> Article 15 Commission proposal for a Qualification Regulation.

<sup>113</sup> Article 21 Commission proposal for a Qualification Regulation.

<sup>114</sup> ECRE, *Comments on the Commission proposal for a Qualification Regulation*, 14-15.

<sup>115</sup> European Parliament, *Draft report on the proposal for a Qualification Regulation*, PE599.799, 21 February 2017, available at: <http://bit.ly/2lCJhmH>, Explanatory Statement, 61.

- ❖ Residence permits, valid for 5 years for both statuses “in the interests of encouraging integration”;<sup>116</sup>
- ❖ Travel documents, valid for 5 years for both statuses “in line with the amendments proposed to the length of residence permits granted to beneficiaries of international protection”;<sup>117</sup>
- ❖ Social assistance, where derogations for subsidiary protection beneficiaries should not be permissible. The inequality of treatment between the two statuses in this regard is described as “legally dubious and administratively unhelpful.”<sup>118</sup>

Conversely, whereas debates in the Council are still ongoing and a common position is yet to be defined, the overall tendency of Member States has been to firmly demarcate refugees and subsidiary protection beneficiaries as different rights holders in the EU. This is illustrated in the proposed deletion of Article 22(2) under the “General rules” on content of international protection, which under the Commission proposal reads: “This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.”<sup>119</sup>

On the duration of validity of residence permits, the Presidency compromise proposal of 21 February 2017 suggests flexible rules, yet maintaining a distinction between the two statuses: refugees would be granted permits valid from 3 to 5 years, while subsidiary protection beneficiaries from 1 to 3 years.<sup>120</sup> This approach seems to have been resisted by the Council, as indicated by the submission of a subsequent compromise proposal by the Presidency to the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 6 March 2017.<sup>121</sup> The March 2017 proposal tested two options on the duration of residence permits:

- (a) The first option would attempt further nuances to the Commission’s harmonisation proposal by requiring refugee permits to be valid from 5 to 10 years, and subsidiary protection permits to be valid from 1 to 5 years. This approach would leave sufficient room to accommodate different national policies, from the uniform 5-year rule on both permits in **Italy** or the **Netherlands** to the dramatic distinction between 10-year permits for refugees and 1-year permits for subsidiary protection beneficiaries in **France**. Overall, however, it would raise the minimum threshold for refugees compared to the Commission proposal. A recital would encourage Member States to opt for a harmonised 5-year term of validity for both categories, while clarifying the principle that Member States already providing for a longer validity term for permits issued to refugees would still be allowed to retain it.
- (b) The second option would maintain the discretion afforded by the recast Qualification Directive, meaning that Member States would be required to grant permits of at least 3 years to refugees and at least 1 year to subsidiary protection beneficiaries.

Support for a uniform treatment of beneficiaries of international protection in this regard seems nevertheless to be echoed by a number of countries. **Greece, Finland, Ireland, Italy** and the **Netherlands** have voiced concerns about a distinction in the duration of residence permits between refugees and subsidiary protection beneficiaries.<sup>122</sup>

<sup>116</sup> *Ibid*, Amendments 81 and 82.

<sup>117</sup> *Ibid*, Amendments 86 and 87.

<sup>118</sup> *Ibid*, Amendment 88.

<sup>119</sup> Council of the European Union, *Proposal for a Qualification Regulation*, 5402/1/17 REV 1 ASILE 2 CODEC 59, 21 February 2017, available at: <http://bit.ly/2Uygzr>, 59.

<sup>120</sup> *Ibid*, 66.

<sup>121</sup> Council of the European Union, *Proposal for a Qualification Regulation: Period of validity of residence permits issued to refugees and beneficiaries of subsidiary protection*, 6926/17 ASILE 10 CODEC 310, 6 March 2017, available at: <http://bit.ly/2miHNxs>.

<sup>122</sup> Council of the European Union, *Proposal for a Qualification Regulation*, 5402/1/17 REV 1 ASILE 2 CODEC 59, 21 February 2017, 67, fn. 102.

The possibility to apply a derogation from the right to social assistance for beneficiaries of subsidiary protection also seems to be maintained by the Council, albeit not unquestioned. The **Netherlands** has voiced reservations against such an approach, while **Spain** has inquired whether it is justified to maintain such a differentiation.<sup>123</sup>

Whereas Council and the European Parliament rapporteur seem to hold diverging views on the duration of residence permits and entitlements to social assistance, the proposed mandatory review of international protection statuses granted under the Qualification Regulation does not seem to garner much support from either institution. The draft report of the European Parliament rapporteur further amends Articles 15 and 21 of the proposal in two ways: review of status (1) should be optional rather than mandatory; and (2) should only occur where common analysis of country of origin information provided by the EU Asylum Agency indicates a significant change in the beneficiary's country of origin which is relevant to his or her protection needs. The idea of a mandatory review tied to the renewal of residence permits is rejected by the rapporteur as highly resource-intensive for the determining authorities, which are often not responsible for issuing permits, and as a measure which would undermine integration prospects.<sup>124</sup>

The Presidency compromise proposal of February 2017 retains the mandatory nature of both provisions but otherwise suggests the same approach taken in the Parliament draft report. Review of status is exclusively linked to the existence of EU Asylum Agency common analysis on the situation in the country or guidance notes indicating a significant change in the country of origin relevant to the individual's protection needs. Here too, the renewal of residence permits is no longer maintained as an action automatically triggering review of status. The mandatory nature of the review is explicitly contested by **Bulgaria, Portugal, Spain, Luxembourg** and **Ireland**, while **France** calls for the outright deletion of both Article 15 and 21 and **Germany** and the **Czech Republic** require further clarification as to the implications for administrations and the authority competent for the review respectively.<sup>125</sup> However, whereas negative implications on beneficiaries' integration prospects are not raised by any of the Member States, nearly all intervening delegations seem to share the concerns relating to increased administrative burdens resulting from the prescriptive approach in the Commission proposal. In light of these positions outlining in the European Parliament and the Council, the Commission increasingly seems to be busy fighting a rear-guard action by insisting on reviewing the need for international protection at the moment of renewal of residence permits.<sup>126</sup>

The administrative implications and potential unintended consequences of the Commission's political rationale behind a two-tier rights system are best summarised by the **Netherlands** in the Council:

"The [Commission] is proposing to keep differences between the rights attached to refugee status and subsidiary protection status; keeping the differences between both statuses will have the effect of considerable additional administrative burden for national systems. While understanding the [Commission]'s intention to stress the temporary nature of international protection with this proposal, it is ill-advised while the associated risks in terms of cost and inefficiency largely outstrip the potential advantages."<sup>127</sup>

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<sup>123</sup> *Ibid*, 76, fn.128.

<sup>124</sup> European Parliament, *Draft report on the proposal for a Qualification Regulation*, Amendments 65, 66, 67 and 74, 75, 76.

<sup>125</sup> Council of the European Union, *Proposal for a Qualification Regulation*, 5402/1/17 REV 1 ASILE 2 CODEC 59, 21 February 2017, 50-51, fn. 67-71, and 58, fn. 87.

<sup>126</sup> *Ibid*, 58, fn. 87.

<sup>127</sup> *Ibid*, 3, fn. 1.

## Concluding remarks

Against the backdrop of a restrictive Commission proposal and fragmented initial positions within the Council and European Parliament, it seems likely that the negotiations on the Qualification Regulation will be far from straightforward. The limited scope of the CEAS vis-à-vis certain rights such as family reunification or naturalisation, which either fall under other EU instruments or solely within national competence, also means that a coherent approach to content of international protection in the Qualification Regulation would not fully resolve the differences in treatment facing refugees and subsidiary protection beneficiaries in Europe. It would, nevertheless, represent a cardinal legal and political step away from the artificial division between the rights attached to the two statuses which would bring about important policy benefits.

From an efficiency and integration perspective, the advantages of the full alignment of refugee status and subsidiary protection under EU law are clear. De-coupling the content and level of rights from the type of international protection status granted could:

- ❖ Foster integration in a more coherent manner, by providing all persons in need of international protection with the tools to become active members of new host societies;
- ❖ Reduce litigation costs related to the form of international protection granted;
- ❖ Reduce potential secondary movements between countries related to the level of rights granted to holders of the status in question;
- ❖ Reduce administrative burden on national authorities by removing undue complexity and fragmentation in integration policies and rules. This would not only affect asylum and immigration authorities, but also employment authorities, social welfare services, or even health care institutions across Europe.

Successful integration of beneficiaries of international protection is generally acknowledged as one of the key challenges for European countries' asylum policies in the coming years. The current discussions on the reform of the Qualification Directive present a unique opportunity to establish an EU legal framework that supports national, regional and local authorities and beneficiaries of international protection in their integration efforts. The systematic and mandatory review of the continued need for international protection in individual cases is particularly unhelpful from both a practical and policy objective. As much as it would result in unnecessary bureaucratic complexity and burden on asylum authorities, including through increased litigation, it is likely to seriously undermine the integration prospects of international protection holders in practice.

Beyond the negotiations on the Commission's Qualification Regulation proposal, the outcome of which is uncertain and may be a very lengthy process, states are encouraged to further approximate the content of international protection statuses in their national frameworks and practices in the interest of a smoother integration process. This will require a coherent vision that looks beyond the current asylum *acquis* and fully acknowledges the importance of family reunification and naturalisation policies adapted to the specific challenges faced by those in need of international protection.

## Annex I – Asylum applicants by country and top three nationalities: 2016

Country	Total	First top country of origin		Second top country of origin		Third top country of origin	
		Country	Applications	Country	Applications	Country	Applications
Germany	745,545	Syria	268,866	Afghanistan	127,892	Iraq	97,162
Italy	123,370	Nigeria	26,975	Pakistan	13,660	Gambia	8,930
France	85,244	Sudan	5,868	Afghanistan	5,641	Haiti	4,854
Turkey	66,167	:	:	:	:	:	:
Greece	51,091	Syria	26,692	Iraq	4,812	Pakistan	4,695
Austria	42,073	Afghanistan	11,742	Syria	8,845	Iraq	2,837
UK	38,517	Iran	4,792	Pakistan	3,717	Iraq	3,651
Hungary	29,423	Afghanistan	11,052	Syria	4,821	Pakistan	3,819
Sweden	28,939	Syria	5,457	Afghanistan	2,969	Iraq	2,755
Switzerland	27,207	Eritrea	5,178	Afghanistan	3,229	Syria	2,144
Netherlands	19,828	Syria	2,207	Albania	1,664	Eritrea	1,558
Bulgaria	19,418	Afghanistan	8,827	Iraq	5,348	Syria	2,639
Belgium	18,710	Afghanistan	2,767	Syria	2,766	Iraq	1,179
Spain	16,544	Venezuela	4,196	Syria	3,069	Ukraine	2,764
Poland	12,321	Russia	8,994	Ukraine	1,306	Tajikistan	882
Finland	5,651	Iraq	1,247	Afghanistan	757	Syria	602
Norway	3,460	Eritrea	586	Syria	529	Afghanistan	373
Cyprus	3,055	Syria	1,248	Somalia	224	Pakistan	217
Ireland	2,244	Syria	244	Pakistan	233	Albania	222
Croatia	2,234	Afghanistan	582	Syria	311	Iraq	309
Malta	1,745	Libya	656	Syria	285	Eritrea	256
Slovenia	1,308	Afghanistan	419	Syria	280	Iraq	120
Serbia	574	Afghanistan	187	Iraq	147	Syria	100

Source: AIDA, Country Reports.

## Annex II – First instance decisions on asylum applications in 2016: All nationalities

Countries	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Decisions				Recognition rates				
Austria	24,685	5,355	330	12,045	58.2%	12.6%	0.8%	28.4%
Belgium	12,197	3,281	-	10,553	46.9%	12.6%	-	40.5%
Bulgaria	754	587	-	1,732	25%	19%	-	56%
Cyprus	129	740	-	748	8%	45.8%	-	46.2%
Germany	256,136	153,700	24,084	173,846	42.1%	25.3%	4%	28.6%
Spain	355	6,500	-	3,395	3.5%	63.4%	-	33.1%
France	19,834	7,545	-	42,673	28.3%	10.7%	-	61%
Greece	2,467	244	-	6,608	26.5%	2.6%	-	70.9%
Croatia	81	16	-	133	35.2%	7%	-	57.8%
Hungary	154	271	7	4,675	3%	5.3%	0.1%	91.6%
Ireland	445	50	-	1,645	20.8%	2.3%	-	76.9%
Italy	4,800	12,090	18,515	54,470	5.3%	13.5%	20.6%	60.6%
Malta	197	1,029	95	150	13.3%	70%	6.5%	10.2%
Netherlands	9,470	10,705	365	8,065	33.1%	37.4%	1.3%	28.2%
Poland	108	150	177	2,188	4.1%	5.7%	6.7%	83.5%
Sweden	17,913	48,935	2,112	19,669	20.2%	55.2%	2.4%	22.2%
UK	8,407	211	191	18,774	30.5%	0.8%	0.7%	68%
Switzerland	5,985	6,850	-	4,181	35.2%	40.2%	-	24.6%
Serbia	19	23	-	40	23.1%	28%	-	48.9%

Figures taken from Eurostat (Austria, Spain, Ireland, Italy, Netherlands) are rounded and include inadmissibility decisions (not Dublin) in “rejection”.

### Annex III – First instance decisions on asylum applications in 2016: Syria

Countries	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Decisions				Recognition rates				
Austria	17,510	1,010	5	45	94.3%	5.4%	0.03%	0.27%
Belgium	5436	1,615	-	286	74.1%	22%	-	3.9%
Bulgaria	688	520	-	67	53.9%	40.8%	-	5.3%
Cyprus	29	694	-	6	4%	95.2%	-	0.8%
Germany	166,520	121,562	910	167	57.6%	42%	0.3%	0.1%
Spain	55	6,160	-	115	0.9%	97.3%	-	1.8%
France	2,520	2,755	-	150	46.4%	50.8%	-	2.8%
Greece	:	:	-	:	:	:	-	0.9%
Croatia	21	15	-	5	51.2%	36.6%	-	12.2%
Hungary	8	84	1	908	0.79%	8.39%	0.09%	90.7%
Ireland	150	0	-	0	100%	0%	-	0%
Italy	1,100	65	5	15	92.8%	5.5%	0.4%	1.3%
Malta	38	334	1	4	10.1%	88.6%	0.3%	1%
Netherlands	6,735	6,130	30	395	50.7%	46.1%	0.2%	3%
Poland	40	3	-	1	90.9%	6.8%	-	2.3%
Sweden	2,619	42,349	5	140	4.8%	76.9%	0.01%	0.3%
UK	1,752	3	1	143	92.3%	0.2%	0.05%	7.15%
Switzerland	1,054	1,278	-	89	43.5%	52.8%	-	3.8%
Serbia	4	2	-	:	:	:	-	:

Source: AIDA, Country Reports, 2016 Update.

Figures taken from Eurostat (Austria, Spain, France, Ireland, Italy, Netherlands) are rounded and include inadmissibility decisions (not Dublin) in “rejection”.



## Annex IV – First instance decisions on asylum applications in 2016: Afghanistan

Countries	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
	Decisions				Recognition rates			
Austria	1,515	2,340	15	3,165	21.5%	33.2%	0.2%	45.1%
Belgium	656	830	-	1,036	26%	32.9%	-	41.1%
Bulgaria	2	9	-	430	0.5%	2%	-	97.5%
Cyprus	:	:	-	:	:	:	-	:
Germany	13,813	5,836	18,441	24,817	22%	9.3%	29.3%	39.4%
Spain	15	15	-	5	42.9%	42.9%	-	14.2%
France	915	2,835	-	800	20.1%	62.3%	-	17.6%
Greece	:	:	-	:	:	:	-	51.2%
Croatia	17	0	-	15	53.1%	0%	-	46.9%
Hungary	28	69	2	1,484	1.8%	4.3%	0.1%	93.8%
Ireland	35	5	-	45	41.2%	5.9%	-	52.9%
Italy	380	3,580	40	125	9.2%	86.8%	1%	3%
Malta	1	0	0	0	100%	0%	0%	0%
Netherlands	140	340	100	1,090	8.4%	20.4%	6%	65.2%
Poland	:	:	:	:	:	:	:	:
Sweden	1,659	941	971	4,152	21.5%	12.2%	12.6%	53.7%
UK	512	6	13	1,097	31.4%	0.4%	0.8%	67.4%
Switzerland	215	1,180	-	166	13.8%	75.6%	-	10.6%
Serbia	1	5	-	:	:	:	-	:

Source: AIDA, Country Reports, 2016 Update.

Figures taken from Eurostat (Austria, Spain, France, Ireland, Italy, Netherlands) are rounded and include inadmissibility decisions (not Dublin) in "rejection".

## Annex V – First instance decisions on asylum applications in 2016: Iraq

Countries	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
	Decisions				Recognition rates			
Austria	1,620	980	5	625	50.1%	30.3%	0.2%	19.4%
Belgium	2,742	556	-	2,774	45.2%	9.2%	-	45.7%
Bulgaria	36	38	-	278	10.2%	10.8%	-	79%
Cyprus	12	27	-	9	25%	56.2%	-	18.8%
Germany	36,801	10,912	439	14,248	59%	17.5%	0.7%	22.8%
Spain	25	55	-	0	31.2%	68.8%	-	0%
France	1,680	395	-	465	66.1%	15.5%	-	18.4%
Greece	:	:	-	:	:	:	-	33.5%
Croatia	21	0	-	14	60%	0%	-	40%
Hungary	12	60	0	484	2.2%	10.8%	0%	87%
Ireland	35	0	-	5	87.5%	0%	-	12.5%
Italy	225	615	35	45	24.4%	66.8%	3.8%	5%
Malta	16	1	0	1	89%	5.5%	0%	5.5%
Netherlands	135	800	45	1,050	6.6%	39.4%	2.2%	51.8%
Poland	5	15	-	0	25%	75%	-	0%
Sweden	1,060	565	157	2,130	27.1%	14.4%	4%	54.5%
UK	247	26	5	1,948	11.1%	1.2%	0.2%	87.5%
Switzerland	115	240	-	243	19.2%	40.2%	-	40.6%
Serbia	4	1	-	:	:	:	-	:

Source: AIDA, Country Reports, 2016 Update.

Figures taken from Eurostat (Austria, Spain, France, Italy, Netherlands, Poland) are rounded and include inadmissibility decisions (not Dublin) in "rejection".



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