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European Council
on Refugees and Exiles

ECRE COMMENTS ON THE QUALIFICATION REGULATION (EU) 2024/1347

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Preamble

The central objectives of the Qualification Regulation (QR) are the harmonisation of decision-making across the EU and implementation of the principle of equal treatment. The third main objective, ending onward movement, is presented as linked to these objectives, including the recognition that onward movement stems from unequal (and therefore unfair) treatment of applicants, and from divergences in approach to and outcomes of decision-making.

Despite the inclusion of amendments introducing procedural guarantees and rendering some restrictive measures discretionary rather than mandatory, the QR remains an example of "harmonising down", where the law – should it be implemented – constitutes harmonisation but at a lower level of protection.

Chapter I General Provisions

Article 2: Material scope

The QR concerns the eligibility for and exclusion from refugee status and subsidiary protection in EU law. It does not preclude the use of national protection statuses and indeed, compared to the QD, it further recognises the value of these statuses and incorporates case law allowing for assessment of eligibility for these statuses in parallel to assessment of eligibility for EU statuses.

Article 3: Definitions

The definition of "application for international protection" no longer excludes requesting another protection status, reinforcing the possibility for requesting national protection statuses in parallel to or at the same time as requesting international protection. The change also reflects the jurisprudence of the CJEU, including *Changu* (C-352/23) in which the Court clarified the parameters for national humanitarian statuses and confirmed their permissibility under EU law so long as they are clearly distinguishable from refugee status and subsidiary protection status under the QD.

There are some expansions in the definition of family and related changes to the family relationships relevant to different parts of the law. Families formed en route and unmarried couples are recognised as family units. The rights of dependent adult children are enhanced, and adult siblings of married minors are recognised as family members.

Chapter II ASSESSMENT OF APPPLICATIONS FOR INTERNATIONAL PROTECTION

Article 4: Submission of information and assessment of facts and circumstances

The QR includes the obligation on the applicant to remain in the Member State responsible which runs throughout the Pact instruments.

Article 4 should be read with new Recital (27) which states that where one or more element of the applicant's statement is not supported by evidence "the applicant should be given the benefit of the doubt". According to the principle, even when independent research is not successful and/ or where some elements of the statement are not susceptible of proof, if the applicant's account appears credible and unless there are good reasons to suggest otherwise, the applicant shall be given the benefit of the doubt.

Article 5: International protection needs arising *sur place*

The QR incorporates the provisions of the QD which establish the right to international protection when needs arise *sur place*, however QR Article 5(2) expands the scope of exceptions to *sur place* international protection covering situations where the applicant takes actions in order to acquire protection.

Despite safeguards introduced during the negotiations, ECRE argues that the revised provision does not align with the Refugee Convention (as was also not the case for the provision in the QD) nor with the CJEU's interpretation of the QD. The CJEU found that the fact that the applicant could have avoided the risk of persecution by abstaining from certain practices "is, in principle, irrelevant"; even in situations where the applicant shows "abusive intent" the person is still a refugee. The QR, while marginally less restrictive than the proposal, still maintains the questionable incorporation of a standard irrelevant to the assessment of protection needs.

Articles 7 and 8: Actors of protection and internal protection alternative

Article 7 builds on the related article of the QD which established that actors beyond the state could be actors of protection. Following amendments from the European Parliament, the actors of protection definition covers "stable, established non-State authorities", and the QD requirement that the entity controls the state or a substantial part of its territory is maintained. International organisations are included among the non-state entities that can be actors of protection. The protection has to be effective and non-temporary. Following case law, it includes operating an effective legal system to tackle persecution, and the actors of protection must be "able and willing" to provide protection.

A major change brought about by the QR is that the internal protection alternative (IPA) becomes mandatory when the state is not the actor of persecution. When the state (or an agent of it) is the actor of persecution, a presumption is created that effective protection is not available, with certain limited exceptions.

In the 2016 proposal, Article 8 expanded the use of the IPA by rendering its application mandatory in most circumstances however following amendments proposed by the European Parliament, the mandatory use is more limited. In the final text, it is not mandatory still possible under certain conditions for Member States to apply the IPA when the persecution or serious harm emanates from the state or its agents.

The concept of the IPA does not stem from the 1951 Refugee Convention and is deemed inconsistent with regional refugee norms in other parts of the world. It adds an additional criterion to eligibility for refugee status beyond the criteria foreseen in Article 1 of the Refugee Convention. The use of the IPA test creates the risk of leaving applicants who are entitled to protection under the Refugee Convention without protection under EU law. These provisions mean that the QR is not "fully in line with the Geneva Convention", as claimed in the Explanatory Memorandum.

Nonetheless, Articles 8(1) to (3) provide important guarantees which have not thus far been consistently applied by the Member States when using the IPA. For example, it lies with the authorities to prove the existence of an IPA, and the applicant cannot be required to prove the inapplicability of the concept in their case. The text incorporates the jurisprudence of the ECtHR, according to which the application of the concept must always be guided by safety considerations, including whether the person can safely travel to the suggested location, whether they will be admitted, and whether they will be able settle successfully. As per Recital (34), when considering whether the applicants can be reasonably expected to settle there, the

authorities must take into account whether they "would be able to cater for their own basic needs in relation to access to food, hygiene and shelter in the context of local circumstances in their country of origin".

CHAPTER III QUALIFICATION FOR BEING A REFUGEE

Articles 9 and 10: Acts of persecution and reasons for persecution

Articles 9 and 10 largely incorporate the provisions of the Refugee Convention on definitions of acts of persecution and reasons for persecution. There are very limited changes compared to the QD. Implementation of these articles should reflect the considerable jurisprudence on membership of a social group, including the significant CJEU cases on women as a social group from 2024.

Article 11: Cessation

The QR includes the established cessation grounds that carry over from the QD and derive from the Refugee Convention. Two clauses are added which apply to nationals and stateless people respectively (QR Articles 11(1)(e) and (f)) according to which refugee status will cease if the circumstances in connection with which the person has been recognised as a refugee have ceased to exist thus precluding them from refusing to avail themselves of the protection of the country of nationality or of former habitual residence.

Article 11 should be implemented in accordance with the case law of the CJEU and notably the *Abdulla* and *OA* judgments. In *Abdulla*, the Court found that refugee status ceases only when "significant and non-temporary" changes in circumstances have occurred such that the grounds for persecution no longer exist and no other grounds have arisen. The standard of proof required for assessing new grounds of persecution is the same as for the original examination of the application. The CJEU judgment goes beyond the basic "mirror image" approach: as well as requiring that the grounds for persecution no longer exist, the authorities must also establish the presence of actors of protection meeting certain criteria.

Article 12: Exclusion

The QR maintains the standard grounds for exclusion derived from the Refugee Convention and previously incorporated into the QD. A new element is introduced at Article 12(4), according to which "the determining authority shall exclude the applicant from [international protection] without performing a proportionality assessment" once they have established that the exclusion grounds in Articles 12(2) or (3) are applicable, which cover the most serious crimes. The original assessment must be done based on an assessment of the seriousness of the crimes and the individual's responsibility, and "taking into account all the circumstances surrounding those crimes or acts and the situation of that person".

CHAPTER IV REFUGEE STATUS

Article 14: Withdrawal of refugee status

One of the main reforms brought about by the QR is changes to Member States' powers to revoke, review and refuse to review international protection statuses, termed "withdrawal" of status. There are five situations in which withdrawal of status is mandatory. Similarly to the QD it obliges Member States to withdraw status when the ground for cessation and exclusion apply and when status was granted by error.

Article 14 then adds points which render mandatory the withdrawal of refugee status when there are reasonable grounds for regarding the person as a danger to the security of the Member State or the person has been convicted of a "particularly serious crime" and

constitutes a danger to the community of the Member State. These two grounds were optional under the QD as "may" clauses. The QR incorporates the QD provision which allows Member States to "not grant" refugee status where the decision has yet to be taken and either of these two grounds apply. ECRE argues that the latter introduces into EU law grounds for exclusion beyond those permitted by the Refugee Convention.

Article 14 also reflects the stronger protection from *refoulement* established in EU law. Under the Refugee Convention Article 33, protection from *refoulement* is removed when the person is a security risk however, they are not excluded from refugee status. Wording from the derogations in Article 33 of the Refugee Convention are instead included in Article 14 as grounds for withdrawal of status rather than as derogations from the principle of *non-refoulement.* The provisions in EU law are thus the inverse of the Refugee Convention: status can be removed but *refoulement* is not allowed, rather than the Refugee Convention formula whereby refugee status is declared but *refoulement* is allowed.

The stronger protection from *refoulement* reflects the jurisprudence of both European courts, and notably the finding of the CJEU in *M* (joined cases C-391/16, C-77/17 and C-78/17) of 2 May 2019, that the *non-refoulement* obligations under the CFREU apply even when Article 33(2) of the Refugee Convention would justify an exception.

In the implementation of the new rules on mandatory withdrawal of status at Article 14(1)(d) and (e) the Member States must follow the jurisprudence of the CJEU on definitions of danger to national security and to the community. These questions have been addressed by the CJEU in the *M* and *AA* groups of cases*,* and in *ZZ, Kadi* and *GM*.

Chapter IV QUALIFICATION FOR SUBSIDIARY PROTECTION STATUS

Article 15: Serious harm

Article 15 incorporates the provisions on serious harm largely as per the QD. Drawing on case law and notably *Elgafaji*, the Regulation addresses the tension within the grounds for subsidiary protection in QD Article 15(c) whereby a balance has to be struck between the requirement that the applicant is experiencing a serious and "individual" threat while at the same time the threat stems from "indiscriminate" violence. However, the balancing is done through Recital (52), rather than through a clear-cut amendment of Article 15(c).

The "determining authorities should not require applicants to adduce evidence that they are specifically targeted" due to their personal circumstances; the requisite level of indiscriminate violence is lower when there is specific targeting based on the personal circumstances of the applicant; and indiscriminate violence alone is exceptionally sufficient for eligibility for subsidiary protection if it reaches a particularly high level.

In addition, Recital (51) specifies that the situation of armed violence does not have to meet the definition of an internal armed conflict in International Humanitarian Law, following the CJEU's judgment in *Diakite*.

Article 16: Cessation

The provisions on cessation of subsidiary protection status replicate those of the QD (derived in turn from the Refugee Convention), with the small addition of the requirement to take into account relevant country analysis.

Article 17: Exclusion

The exclusion grounds for subsidiary protection have been adapted compared to the QD. QR Article 17(1) sets out four situations at points (a) to (d) where the person shall be excluded

from eligibility for subsidiary protection. Unchanged from the QD, these are where there are "serious reasons" for considering the person has committed a crime against peace, a war crime or a crime against humanity, or where they are guilty of acts contrary to the UN. It also includes where the person has committed a serious crime prior to arrival or has been convicted of a serious crime after arrival or constitutes a danger to the community or national security.

As is the case in the QD, the exclusion grounds for subsidiary protection are broader than those that apply for exclusion from refugee status, which mirror the Refugee Convention. In particular, the fourth ground at Article 17(1)(d) covers a potentially wide set of applicants. Case law should guide implementation,

Article 19: Withdrawal

Whereas Article 14 concerns the withdrawal of refugee status, Article 19 includes similar provisions in relation to subsidiary protection status. Withdrawal is mandatory in the equivalent circumstances. Per Article 19(1)(b) the broad grounds for exclusion are also grounds for withdrawal of subsidiary protection status, including when there are serious reasons for considering that the person "constitutes a danger to the community or to national security".

A change compared to the QD is a broadening of the situation in which subsidiary protection status must be withdrawn. In the QD, it was possible but not mandatory for Member States to withdraw protection when the beneficiary had committed one or more serious crime prior to admission and they left the country of origin solely in order to avoid sanctions arising from those crimes. Under the QR, if any of the (mandatory or discretionary) exclusion grounds in Article 17, apply then withdrawal of status is mandatory. The case law of the CJEU will be of paramount importance in the interpretation of these provisions and their application in practice.

CHAPTER VII CONTENT OF INTERNATIONAL PROTECTION RIGHTS AND OBLIGATIONS OF BENEFICIARIES OF INTERNATIONAL PROTECTION

Article 20: General rules

The QR requires that Member States "shall take provisional measures" to ensure that beneficiaries "have effective access" to the rights laid down in the Regulation, except for the right to a travel document and of freedom of movement within the Union, until a residence permit is issued.

Article 21: Protection from refoulement

Article 21 on the principle of *non-refoulement* has been amended to remove the sections setting out the derogations from the principle on national security grounds provided for in Article 33(2) of the Refugee Convention. The QR instead includes references to these elements as exclusion grounds at Article 24(5). As discussed above, the Regulation follows the wider approach of EU law which prohibits *refoulement*, rather than the approach of the Refugee Convention, according to which people in these categories are not excluded from refugee status but can be refouled.

Article 22: Information

Article 22 now specifies the information to be provided "as a minimum" to beneficiaries and an annex includes a standard template for the provision of information.

The Article has been adapted to incorporate the requirement to "make explicit references to the consequences of not complying with the obligations provided for in Article 27 on movement within the Union" (Article 22(b)). As such, it reflects the punitive approach to onward movement which runs as a strand throughout the new legislation.

Article 23: Maintaining family unity

Article 23 slightly weakens the right to family unity, first by removing the explicit reference to the state's obligation to maintain family unit at QD Article 23(1) (however this obligation can be derived other instruments of EU law and international law). Then, the rights of family members who do not individually qualify for international protection are to be accessed in two steps rather than one. As elsewhere in the reforms, the reference to "public order" has been replaced by the broader and less clear "public policy".

Article 24: Residence permits

The QR introduces changes on the issuing of residence permits which improve the rights of beneficiaries. The Article specifies that beneficiaries have the right to a residence permit for as long as they have status; the permit be issued as soon as possible and not later than 90 days after notification of the granting of status; and the permit should be issued free or for a limited charge. The authorities may revoke or refuse to renew a permit only when status has been withdrawn through application of Articles 14 or 19. Withdrawal reasons related to "public order" are no longer included.

The validity periods remain as for the QD: the first residence permit shall have a validity period of at least three years for refugee status and one year for subsidiarity protection, and the validity periods on renewal remain three years and two years respectively.

ECRE welcomes the introduction of a 90-day time limit. Nonetheless, the 2016 proposal's version of Article 24(2) introduced a time limit of 30 days rather than 90 days which was a more suitable time limit in terms of the applicants' rights and Member States' practice.

Unfortunately, the QR retains an unjustifiable distinction between the two statuses, based on the false assumption that subsidiary protection is of a more temporary nature than refugee status. ECRE underlines the need to align the duration of residence permits issued to the two statuses because there is no objective reason for subsidiary protection to be of a shorter duration, especially given the increasing length of contemporary conflicts. To do so would reduce erroneous decision-making and related "upgrade" appeals.

Recital (48) underlines, first, that the content of protection can only differ where explicitly provided for by the Regulation, and second, that "The Regulation nevertheless allows Member States to grant the same rights and benefits under both statuses".

Article 25: Travel document

The QR requires that travel documents issued to beneficiaries of both statuses be valid for at least one year. The short duration of travel documents under Articles 25(1) and (2) is liable to lead to administrative burden and deny beneficiaries opportunities to travel, which contradicts the Refugee Convention. The duration of the travel document is also less than the minimum duration of the residence permit for people with refugee status.

Article 26 and 27: Freedom of movement within the Member State and Movement within the Union

In line with the CJEU's ruling in *Alo and Osso*, the QR now clarifies that the right to free movement within the territory also encompasses the beneficiary's "right to choose their place of residence in that territory". The Article also incorporates Article 26 of the Refugee Convention by referring to the applicability of conditions and restrictions such as those provided for other third-country nationals legally resident "who are in a comparable situation".

In contrast, Article 27 specifies that beneficiaries do not have the right to reside in any Member State other than the one granting international protection. Nonetheless, although it is not a right, they may be allowed to reside in another Member State based on national law or other provisions of EU or international law.

ECRE welcomes the alignment of free movement rights for refugees and subsidiary protection beneficiaries but reiterates its longstanding position that beneficiaries of international protection should be granted freedom of movement across the EU, in keeping with the Article 78(2)(a) TFEU objective of a "uniform asylum status, valid throughout the Union".

Article 28: Access to employment

The provisions in Article 28 state clearly that beneficiaries of refugee status and subsidiary protection have the right *to* work and then considerably expand the rights *in* work of this group compared to the QD. Beneficiaries shall enjoy equal treatment with nationals in certain regards.

Article 29: Access to education

Under Article 29, the right to education of beneficiaries is enhanced for children and adults alike.

Article 31: Social security and social assistance

Article 31(1) states clearly that equal treatment with nationals should be provided as regards social security and social assistance, reflecting Article 23 of the Refugee Convention. It then adds a qualification such that access to certain forms of social assistance can be "made conditional on the effective participation of the beneficiary of international protection in integration measures, where participation in such measures is compulsory". Following amendments from the Parliament, this applies provided that such integration measures are accessible and free of charge.

Article 31(2) maintains the restriction in the QD that allows Member States to limit assistance provided to beneficiaries of subsidiary protection to "core benefits", however this is now "where that possibility is provided for under national law". Point 2 also stipulates that core benefits should include at a minimum: "at least" minimum income support, assistance for health reasons, parental assistance, and housing benefits when that possibility is provided for under national law. ECRE opposes discrimination between refugees and subsidiary protection beneficiaries as regards the content of protection.

Article 33: Unaccompanied minors

The provisions on unaccompanied children strengthen the rights of this particularly vulnerable group, as is the case throughout the new asylum legislation.

Article 33(1) maintains the provision that the authorities shall appoint a guardian for an unaccompanied minor "as soon as possible" after international protection is granted to them and include details on the responsibilities and qualifications required for guardians.

Article 34: Access to accommodation

The QR slightly restricts the right to housing of beneficiaries. First, in Article 34(1), the treatment equivalent to other non-citizens is limited to those "who are generally in the same circumstances". Second, at Article 32(2), dispersal systems should ensure equal treatment "unless different treatment is objectively justified".

Article 35: Access to integration measures

Compared to the equivalent QD Article 34, the QR expands both the rights and obligations of beneficiaries in relation to integration measures. The states' obligation to provide integration measures is underlined but the QR also creates a new obligation on beneficiaries to participate in integration measures when participation is compulsory (so long as measures are accessible and free of charge.)

ECRE does not oppose compulsory integration measures *per se* however where Member States choose to introduce mandatory integration measures, these should not be burdensome or costly for the person, nor should they exceed what is necessary to actually promote integration. As with other parts of the Pact, there is a risk that obligations are introduced as a means to trigger restrictive practices, for example, by putting place obligations that are difficult to achieve and then activating restrictive measures as a punishment for not meeting the (unrealistic) obligations. In the area of integration, the CJEU judgment in *Keren* (C-158/23) should guide implementation.

Article 40: Amendment of Directive 2003/109/EC

The QR amends the Long-Term Residence Directive (LTRD) in two ways. LTRD Article 4(2) on duration of residence is amended for those who receive international protection: the period between the lodging of the application and the provision of the residence permit will count towards the five years necessary to qualify for long-term status.

Second, Article 40(2) introduces a paragraph into the LTRD such that if a beneficiary is found in a Member State other than the one granting international protection, then the period of legal stay in the Member State granting protection before the onward movement must not be included in the calculation of the five years to qualify for long-term status. Effectively the calculation of the five years restarts every time the person is found to be unlawfully present in another Member State. The provision is qualified because the Member State may still include this period, "in particular where the beneficiary of international protection demonstrates that the reason for the stay or residence without a right was due to circumstances beyond that beneficiary's control".

While the first amendment introduces a small welcome change, the second represents a continuation of the punitive approach to onward movement which runs throughout the reforms and restricts the possibility for refugees and subsidiary protection beneficiaries to lawfully move within the EU, despite the many reasons and benefits to states of allowing freedom of movement.

Introduction

The proposal for a Qualification Regulation (QR or "the Regulation")[1] was published on 13 July 2016, as part of a second package of reforms of the Common European Asylum System (CEAS), with the final text adopted on 14 May 2024. The Regulation repeals the recast Qualification Directive (QD)[2] of 13 December 2011 and covers the same subject matter: "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".

The Explanatory Memorandum attached to the proposal of 13 July 2016 enumerated the aims of the Regulation as follows:

1. Further harmonisation of the common criteria for qualification;
2. Greater convergence of asylum decisions;
3. Measures to restrict protection status so it is in place only for as long as grounds for persecution or serious harm persist, with a secondary aim of promoting integration;
4. Addressing "secondary" movements;
5. Further harmonising the rights of beneficiaries (the content of protection).

As with the other proposals for which the content was largely agreed by the co-legislators in 2018, the impact on the fundamental rights of applicants is mixed. Compared to the QD, there are both changes which enhance the rights of asylum applicants and beneficiaries of international protection and changes which are likely to reduce access to rights, including the right to asylum itself. Despite the transformation of the directive into a regulation, the changes are not extensive, and, unlike the legislation agreed in 2023, the text is not highly complex and characterised by legal ambiguities.

When the proposal was presented, ECRE expressed three major concerns. First, the measures in the text were contradictory in that some aimed at supporting integration while others rendered protection status more precarious, which is a major obstacle to integration. Second, the proposal further widened the gap between the EU asylum *acquis* and the central pillar of international refugee law, the Convention relating to the status of refugees of 1951 and its 1967 Protocol (hereafter "the Refugee Convention") through expanding and rendering mandatory the use of legal concepts with no basis in that convention. Third, the proposal constituted "negative harmonisation", an approach which runs throughout the reform, and which results in greater harmonisation but at a lower standard of protection.

Following the analysis and drafting of amendments by and negotiations between the co-legislators, the Council of the EU and the European Parliament, the final text partially assuages some of these concerns. In terms of precarity of status, the provisions for mandatory review of status were removed and in regard to the Refugee Convention, the use of the concept of the internal protection alternative is more limited than in the proposal. Overall, however, while there are some elements that improve access to rights, read in conjunction

[1] Regulation (EU) 2024/1347 of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council [2024] OJ L2024/1347, available here.

[2] 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) [2011] OJ L2011/337, available here.

with the other Pact legislation, the trend towards negative harmonisation is further consolidated.

Analysis of Key Provisions

Preamble

Recitals 1-6

The Preamble explains that the Qualifications Directive (QD) was transformed into a regulation for three main reasons:

- To ensure harmonisation and greater convergence of decision-making;
- To reduce incentives for onward movement ("secondary movements")[3];
- To ensure equal treatment for beneficiaries of international protection across the EU.[4]

It states that the change was needed "to ensure a more consistent level of harmonisation throughout the Union and to provide a higher degree of legal certainty and transparency."[5]

The Preamble identified the areas where there are significant disparities between the Member States to be targeted via the change from a directive into a regulation, namely:

- Decisions on the procedures to be used;
- Diverging recognition rates;
- Differences in the type of protection granted;
- Different levels of material reception conditions provided; and
- Different benefits provided to applicants and beneficiaries of international protection.[6]

It adds that such disparities could lead to onward movement and undermine the principle of equal treatment of applicants regardless of where they apply in the EU.

Implementation considerations

Over the last decade, ECRE has consistently raised concerns about disparities in the treatment of asylum applications in Europe, and notably about divergences in protection rates, termed the "asylum lottery".[7] ECRE made two general remarks on the stated aims of the proposal for the Qualification Regulation (QR or "the Regulation"), which remain relevant for the implementation stage.

First, there is a risk of contradictory outcomes in that the Regulation includes measures to support integration while at the same time rendering protection status more precarious. A stable protection status is a precondition for inclusion in European societies. Second, the approach in the Regulation is to achieve convergence through legislative harmonisation, with the transition to a regulation removing discretion currently available to Member States. While the efficacy of such an approach can be questioned in general – and in especially in an area of EU law where non-compliance is rife – ECRE's main concern remains that the content of the reform represents "harmonisation downwards", meaning introducing stricter common rules but at a lower level in terms of international protection.[8] While certain of the more damaging

3 The term used in EU policy and law is usually "secondary movement", ECRE uses "onward movement" as it is a more accurate term. See explanation in UNHCR, 'Guidance on responding to irregular onward movement of refugees and asylum seekers', 2019, p.1, available here.
4 QR Recital (1).
5 Ibid. Recital (6).
6 Ibid. Recital (3).
7 ECRE 'Factsheet, Asylum Statistics and the Need for Protection', December 2022, available here.
8 ECRE 'Comments on the Commission Proposal for a Qualification Regulation (COM 2016 466)', November 2016, available here.

elements of the reform were either removed during the negotiations or were constrained with safeguards, these two concerns remain.

The concern about harmonising at lower standards is reinforced by the removal of previous Qualification Directive (QD) Article 3 on more favourable standards, which explicitly gave Member States the right to introduce or retain more favourable standards for both determination of status and the content of protection.

The trend towards the lowering of standards is nonetheless tempered by the general principles of interpretation of EU law which require interpretation of secondary legislation in accordance with EU primary law, including the Treaties and the Charter of Fundamental Rights of the EU (CFREU).[9] The Treaty on the Functioning of the EU (TFEU) includes at Article 78 the requirement that interpretation respects international law, a provision which is of particular relevance to the QR since it draws extensively on international law, in particular the Refugee Convention.

Recommendations

- In implementation of the QR, the Member States and Commission should ensure equal and fair treatment across the EU of applicants and beneficiaries of international protection, including in terms of access to rights. This is an objective of the QR in itself, but also the most effective means to attain the objective of reducing onward movement which runs throughout the Pact.
- While the QR represents harmonisation at a lower level of protection, the requirement of interpretation in respect of EU primary law, including the CFREU, and international law sets the threshold below which standards should not fall.

Chapter I: General Provisions

Article 1: Subject matter

Without any material change compared to the equivalent article in the QD, the Regulation lays down standards in three areas: first, qualification as a beneficiary of international protection, covering the two statuses regulated in EU law, refugee status and subsidiary protection; second, rules to ensure a "uniform status" across the EU for refugees and those eligible for subsidiary protection; and, third, the content of protection, i.e. the rights attached to protection statuses.

Article 2: Material scope

The Regulation adds a point in Article 2 on material scope which echoes Recital (9) and clarifies that the Regulation does not apply to national humanitarian statuses, "National humanitarian statuses, where granted, shall not entail a risk of confusion with international protection."[10] The Explanatory Memorandum attached to the proposal, in its summary of

[9] Joined Cases C-391/16 M v Ministertvo, C-77/17 and C-78/17 X v Commissaire général aux réfugiés et aux apatrides [2019] ECLI:EU:C:2019:403, para 77: "77 In that regard, it should be borne in mind that, in accordance with a general principle of interpretation, an EU measure must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole and, in particular, with the provisions of the Charter (judgment of 15 February 2016, N., C, EU:C:2016:84, paragraph 48 and the case-law cited). Thus, if the wording of secondary EU law is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with primary law rather than to the interpretation which leads to its being incompatible with that law (judgment of 26 June 2007, Ordre des barreaux francophones et germanophone and Others, C, EU:C:2007:383, paragraph 28 and the case-law cited)."

[10] QR Article 2.

stakeholder consultations, noted the Member States' continued interest in the use of national humanitarian statuses, as well as their awareness of the risk that precarity of status undermines integration as follows:

> "There has been also support for further harmonising the duration of the permits issued. However, a number of Member States indicated that the possibility to issue residence permits on other grounds (humanitarian or legal migration ground) upon cessation of the protection status should not be undermined, and of the importance of not unduly undermining integration prospects via the perception that the protection may only be temporary."

Implementation considerations

There is no indication from the proposal, background document or negotiations to suggest that the use of humanitarian and other national protection statuses is to be discouraged. While the QR regulates the use of international protection statuses in EU law, specifically refugee status and subsidiary protection, these statuses have existed and continue to exist in parallel with national-level protection statuses.

In a geopolitical context characterised by increasing levels of and new types of conflict, armed violence and repression, and where many people seeking protection have complex needs, ECRE underlines the immense importance of protection statuses that exist in national law. There is sometimes a tendency on the part of the EU institutions to undermine these statuses in the interest of harmonising all statuses in EU law. Neither the elimination of national statuses nor efforts to integrate them into the EU's legal order is advisable. Rather, Member States require the largest number of options in order to respond to the complexity of contemporary protection challenges, a point recognised by the European Commission in its proposals for options for those displaced from Ukraine when there is a transition out of the Temporary Protection Directive.[11]

Recommendations

- Member States should use national protection statuses as widely as possible for cases where people do not qualify for EU protection statuses under the QR. The European Commission should cease efforts to discourage or eliminate from statute national protection statuses.
- In order to facilitate this outcome, national protection statuses need to be retained or added to national legal frameworks and information on these statuses should be available to legal practitioners.

Article 3: Definitions

There are a number of changes to the definitions used in the QR as compared to the QD, some are material, some not. Regarding the latter, the definition of the "Geneva Convention" is removed. The following varyingly significant changes should be noted:

Humanitarian protection status

[11] Proposal for a Council Recommendation on a coordinated approach to the transition out of temporary protection for displaced persons from Ukraine [2025] COM/2025/651 final (2025/0651), available here. In September 2025, the Member States adopted the proposal as a Council Recommendation.

- The definition of "application for international protection"[12] no longer includes the condition that the person "does not explicitly request another kind of protection [...] that can be applied for separately".[13]

Family unity

- In relation to family members, families formed en route are now included because the definition covers all families that "existed before the applicant arrived on the territory of the Member States". Recital (19) notes that this is to avoid discrimination.
- The "unmarried partner in a stable relationship"[14] of the beneficiary of international protection can be considered one of their "family members"[15] where the law or practice of the Member State concerned treats unmarried couples as "equivalent" to married couples.[16] In the QD, such couples had to be treated in a "in a way comparable to married couples under [the Member State's] law relating to third-country nationals".[17]
- Dependent adult children are recognised as family members so long as they are unmarried. Recital (17) adds that dependency should be determined on the basis of an individual assessment and only applies where the adult child is unable to support themselves "due to a physical or mental condition linked to a serious non-temporary illness or severe disability".
- Marriage of children is not recognised if it would not have been recognised as legal according to national law, with particular regard to the legal age of marriage in the Member State. Thus, an "unmarried minor" includes a minor whose marriage "would not be in accordance with the relevant national law, had it been contracted in the Member State concerned, having regard, in particular, to the legal age of marriage."[18]
- Recital (19) excludes forced marriages and marriages of convenience (whereas according to Recital (18) decisions in situations of polygamy are left to the discretion of the Member State). Relatedly, Recital (20) provides that for married minor children if the Member State decides for reasons of family unity that the best interests of the child "lie with the parents" then the spouse does not have residence rights.
- It is now explicitly provided that the beneficiary of international protection's "adult sibling" can be considered one of their "family members"[19] when the beneficiary is an unmarried child.[20]

Documents

- "Resident permits" are now to be issued under a "uniform format" according to relevant EU legislation.[21]

Withdrawal

- "Withdrawal of international protection" is defined as "a decision by a determining authority or a competent court or tribunal to revoke or end, including by refusing to renew, international protection."[22]

12 QR Article 3(7).
13 QD Article 2(h).
14 QR Article 3(9)(a).
15 Ibid. Article 3(9).
16 Ibid. Article 3(9)(a).
17 QD Article 2(j).
18 QR Article 3(9)(b)-(c).
19 Ibid. Article 3(9).
20 Ibid. Article 3(9)(c).
21 Ibid. Article 3(12).
22 Ibid. Article 3(14).

Determining authority

- "Determining authority" includes the additional information that it is "a quasi-judicial or administrative body in a Member State which is responsible for examining applications for international protection and is competent to take decisions at the administrative stage of the procedure."[23]

Guardian

- Finally, in line with expanded use of the concept in EU law, "Guardian" is a natural person or an organisation designated to assist, represent, and act on behalf of an unaccompanied minor to ensure the respect for their rights and obligations under the Qualifications Regulation and safeguard their best interests and general well-being.[24]

Implementation considerations

The definition of application for international protection no longer excludes requesting another protection status, which suggests that requesting national protection statuses in parallel to or at the same time as requesting international protection will not compromise the latter. The change also reflects the jurisprudence of the CJEU. For example, in *Changu* (C-352/23)[25], the Court clarified the parameters for national humanitarian statuses and confirmed their permissibility under EU law so long as they are clearly distinguishable from refugee status and subsidiary protection status under the QD.

The change could serve to minimise the administrative burden on the Member States (and reflects how many Member States operate in practice), while facilitating access to these statuses in national law, including statuses resulting from EU or international law obligations, such as the residence permit in Directive 2004/81/EC for victims of human trafficking[26] and the residence permit in Article 59 of the Istanbul Convention.[27] It should be noted that the Istanbul Convention must be taken into account in the interpretation of the QR as required by the jurisprudence of the CJEU.[28]

ECRE welcomes the explicit recognition of the adult sibling of a married minor as a family member of the beneficiary, underlining the paramount importance of the right to family unity and the best interests of the child principle.

Recommendations

- In the interests of efficiency, Member States should examine eligibility for national protection statuses in the same processes as examination of eligibility for EU protection statuses (after determination that EU statuses do not apply). Alternatively, examination in parallel could take place.
- All provisions of the Qualification Regulation have to be interpreted in compliance with Articles 60 (gender-based asylum claims) and 61 (non-refoulement) of the Istanbul Convention.

23 Ibid. Article 3(15).
24 Ibid. Article 3(18).
25 Case C-352/23 (*Changu*) [2024] ECLI:EU:C:2024:748.
26 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, [2004] OJ L 261, 6.8.2004, pp. 19–23.
27 *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (opened for signature 11 May 2011) (CETS No. 210).
28 Case C-621/21 *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)* [2024] EU:C:2024:47 paras 37 and 44 to 47; and Case C-646/21 *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)* [2024] EU:C:2024:487, para 36.

Chapter II: Assessment of Applications for International Protection

Article 4: Submission of information and assessment of facts and circumstances

Obligations of the applicant and Member State

Article 4 makes certain limited changes to the obligations of the applicant and the Member State as regards the submission of information and assessment of the claim.[29]

On submission of information, whereas QD Article 4(1) requires that applicants submit all elements available to them "as soon as possible",[30] the QR holds that the "applicant shall submit all the elements available to them",[31] deleting the requirement to do so "as soon as possible". This provision should be read in conjunction with the Asylum Procedures Regulation (APR), however, where stricter obligations are introduced, including on the timely submission of information in relation to the application, with consequences for non-compliance including the implicit withdrawal of the application.[32]

On restriction of movement, there is a new reference to absconding and Article 4(1) requires that applicants "remain present and available on the territory of the Member State responsible",[33] which is consistent with similar provisions across the revised legal framework which aim to limit onward movement. Notably, the Regulation on Asylum and Migration Management (AMMR), at Article 17 requires that applicants make the application in the Member State of first entry. It should be noted that, according to Recital (30) which cross-references the recast Reception Conditions Directive (RCD), applicants may only be considered as absconding when they leave "for reasons which are not beyond the applicant's control".[34]

The duty of the determining authority to assess the application is provided for in Article 4(3) with a cross-reference to Article 34 of the APR. However, neither instrument mentions the duty of the determining authority to do so "in cooperation with the applicant", as is the case in the QD.[35] The state's obligation in this regard is however established in the case law of the European Court of Human Rights (ECtHR), which found that "it was for the national authorities, faced with a situation in which human rights were being systematically violated, [...] to find out about the treatment to which the applicants would be exposed after their return."[36] The corollary obligation of the applicant is to cooperate with the determining authority, which has been codified in Article 4(1), above.[37]

While the QR further fails to maintain from the QD that the assessment of an application for international protection "is to be carried out on an individual basis",[38] the requirement is found

29 QR Article 4(1).
30 QD Article 4(1).
31 Ibid. Article 4(1).
32 Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU [2024] OJ L, 2024/1348, available here.
33 QR Article 4(1).
34 Ibid. Recital 30; Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection [2024] OJ L, 2024/1346, Article 2(12), available here.
35 QD Article 4(1); ECRE 'Comments on the Regulation Establishing a Common Procedure for International Protection in the EU', October 2024, p.50, available here.
36 *Hirsi Jamaa and Others v Italy* (Application no. 27765/09) [2012] ECHR 23 February 2012, para 133.
37 QR Article 4(1).
38 QD Article 4(3).

in the APR which states that applications shall be examined "objectively, impartially, and on an individual basis".[39]

Article 4(2)(b) includes the same exhaustive list of documents to be provided as in the QD, except for two elements. QR Article 4(2)(b)(iii) refers to the applicant's "relevant family members and other relatives"[40] rather than only to the applicant's "relevant relatives";[41] and Article 4(2)(b)(viii) introduces a new document to be submitted: the results of resettlement or humanitarian admission procedure relating to the applicant as defined under the Union Resettlement Framework Regulation (URF).[42]

Evidence and the benefit of the doubt principle

Article 4(5) covers the question of evidence to support the applicant's claim. ECRE recommended an explicit reference to the "benefit of the doubt" principle.[43] While unfortunately it does not appear in the final text of the articles, it is included in new Recital (27) which states that where one or more element of the applicant's statement is not supported by evidence "the applicant should be given the benefit of the doubt". According to the principle, even when independent research is not successful and/ or where some elements of the statement are not susceptible of proof, if the applicant's account appears credible and unless there are good reasons to suggest otherwise, the applicant shall be given the benefit of the doubt.[44]

The Article maintains the provisions in the QD such that when particular aspects of the statement are not supported by evidence, no further evidence shall be required when four cumulative conditions (a to d) are met. Amongst these, Article 4(5)(b) still requires a "satisfactory explanation" as to the lack of other relevant elements at the applicant's disposal. ECRE advocated to remove the requirement for a "satisfactory explanation" in its Comments on the proposal, *inter alia* in order to better reflect the benefit of the doubt principle.

One change compared to the QD is that previous QD Article 4(5)(d), a standalone point on whether the applicant has applied for international protection "at the earliest possible time", is shortened and becomes part of the QR Article 4(5)(d), which merges the previous QD Article 4(5)(d) and (e), as follows: "(d) the general credibility of the applicant has been established, taking into account, inter alia, the time at which the applicant applied for international protection."

QR Article 4(5)(d) thus focuses on whether the general credibility of the applicant has been established. It states, however, that this must be done "taking into account, inter alia, the time at which the applicant applied for international protection". ECRE advocated to remove the time requirement in its Comments on the proposal in order to better reflect the benefit of the doubt principle.

Recital (27) also requires that "a satisfactory explanation has been given regarding the lack of other relevant elements" and that "general credibility has been established taking into account the moment when the applicant applied for international protection and, where appropriate, the reasons for not having applied sooner". ECRE advocated for the addition of this recital.

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39 APR Article 34(2).
40 QR Article 4(2)(b)(iii).
41 QD Article 4(2).
42 QR Article 4(2)(b)(viii).
43 UNHCR 'Handbook and guidelines on procedures and criteria for determining refugee status' (UNHCR 2011), para 196, available here.
44 Ibid.

Implementation considerations

Obligations of the applicant and Member State

Deleting the applicant's requirement to submit all elements "as soon as possible" is welcome as it may address the concerns about Member State practices whereby late submission of evidence is counted against the applicant's credibility. Nonetheless, the QR will be read in conjunction with the APR in which delays in submission of elements carry significant procedural consequences.

Also relevant to QR Article 4 is the guarantee in the APR that assessments must be carried out "objectively, impartially, and on an individual basis", a welcome addition to that instrument. It should be used as a safeguard against assessments being carried out on the basis of nationality. It will also help to ensure that a collaborative process between the parties is maintained in the asylum procedure, including mandatory cooperation where it is necessary in line with the CJEU's judgment in *M*[45] and with the standards identified by the ECtHR in *Hirsi Jamaa*.

The extent of that collaboration and standards for the assessment required under EU law have been elaborated in the CJEU's judgment in *International Protection Appeals Tribunal and Others (Attentat au Pakistan)*.[46] The assessment should be conducted with vigilance and care and it should properly consider all the personal circumstances of the individual, the situation prevailing in the country of origin, and any explanation for a lack of evidence. The Member State's obligation to cooperate is particularly important when the applicant submits documents for which authenticity cannot be established.[47]

Benefit of the doubt principle

ECRE remains concerned that, despite the lighter time requirement and the addition of Recital (27), the applicant's credibility could nevertheless be adversely affected by the lack of elements or documentation at their disposal or by the late submission of an application. In addition, explanations for the lack of provision of relevant elements must still pass the threshold of being "sufficient".

The CJEU found in *A, B and C* that, while the QD refers to the applicant submitting all elements as soon as possible to substantiate their claim, it is incumbent on the national authorities to cooperate with them when assessing the relevant elements of the case, and to have regard to the sensitive nature of the claim.[48] For example, in *A, B and C*, not declaring one's sexuality at the outset could therefore not result in a lack of credibility.[49]

The Court stated that the time requirement under QD Article 4(1)[50] "is tempered" as a result of the requirement that the authorities assess the applicant's claim on an individual basis[51] (now found in Article 34 of the APR).[52] The same logic should be applied to the time

45 Case C-277/11 *M. M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General* [2012] EU:C:2012:744, paras 65 and 66.
46 Case C-756/21 *International Protection Appeals Tribunal and Others (Attentat au Pakistan*) [2023] ECLI:EU:C:2023:523, paras 49-54.
47 Case C-921/19 *Staatssecretaris van Justitie en Veiligheid (Éléments ou faits nouveaux)* [2021] ECLI:EU:C:2021:478.
48 Joined cases C-148/13, C-149/13 and C-150/13, *A, B and C v Staatssecretaris van Veiligheid en Justitie* [2014], paras 56-58.
49 CJEU, *A, B and C*, para 69.
50 QD Article 4(1).
51 CJEU, *A, B and C*, para 70.
52 APR Article 34(2).

requirement under QR Article 4(5)(d).[53] The Court further clarified that all fundamental rights, including dignity and privacy, must be respected in the process.[54] The threshold for an explanation to be "sufficient" should be clarified through case law, following a logic in line with fundamental rights, as the Court highlighted.

Recital (27) reflects this line of case law and should thus be applied in evidence assessment.

Recommendations

- Member States should cease the practice of construing late submission of elements as an indication of the lack of credibility of a claim.
- Member States should apply the now codified benefit of the doubt principle set out in Recital (27) in relation to applicants' obligations.
- Member States should follow the cooperation requirement set out of the APR and in relevant case law.

Article 5: International protection needs arising sur place

Article 5 regulates situations where protection needs arise *sur place*, meaning that they relate to events that have taken place or activities the applicant has engaged in since they left the country of origin or residence. This is in contrast to protection needs that arise due to events in the country of origin or residence which force the applicant to flee. QR Article 5(1) incorporates the provisions of the QD which establish the right to international protection when needs arise *sur place*, however QR Article 5(2) goes beyond the equivalent provisions in the QD to expand the scope of exceptions to *sur place* international protection.

Under QR Article 5(2) Member States may refuse to grant international protection when the risk of persecution or serious harm is based on circumstances which the applicant has generated for the "sole or main purpose" of receiving a protection status.[55] The exception can be applied to all applicants, whereas in the QD the equivalent provision applied only to subsequent applications. While the 2016 proposal also referred only to subsequent applications, following an amendment proposed by the Council, all applicants will be captured by the clause.

In contrast, under the QD (and in the proposal) in the situation described where the applicant has generated the circumstances for the purpose of receiving protection, the applicant "shall not normally" be granted protection[56], whereas in the QR a "may" clause is used, leaving it up to the Member States' discretion as to whether to apply the exception and deny protection.

In addition, QR Article 5(2) adds a further protection in stating that the applicant must have created the circumstances "for the sole or main purpose" of creating the conditions for applying for international protection. That the applicant must have done so in a deliberate manner (i.e. "through their own decision") – which was included in the QD and the proposal – is no longer explicit in the text, however it is arguably implied by the reference to the applicant creating the conditions with a purpose in mind. Article 5(2) further stipulates that the decision to deny protection must respect the Refugee Convention, the ECHR and the CFREU, which means

53 QR Article 4(5)(d).
54 CJEU, *A, B and C,* paras 69-70.
55 QR Article 5(2).
56 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 the 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 [2016] COM/2016/0466 final - 2016/0223 (COD). Article 5(2).

that even if protection is denied, the applicant enjoys protection from refoulement and other rights.

Thus, Article 5(2) widens the scope of the exception to cover all applicants but also widens the discretion granted to Member States to decide whether or not to refuse international protection, while adding safeguards with the reference to the reasons of the applicant.

ECRE argues nonetheless that the revised provision does not align with the Refugee Convention (as was also not the case for the provision in the QD)[57] nor with the CJEU's interpretation of the QD. The CJEU has found that when reviewing whether an applicant's fear of being persecuted is well-founded, the fact that the applicant could have avoided the risk of persecution by abstaining from certain practices "is, in principle, irrelevant".[58] Even in situations where the applicant shows "abusive intent" the person is still a refugee.[59]

Implementation considerations

The QR, while marginally less restrictive than the proposal, still maintains the questionable incorporation of a standard irrelevant to the assessment of protection needs. ECRE is further concerned that a subjective assessment of whether the applicant created the circumstances in order to be eligible for international protection may deny protection to some of those whose protection needs arise *sur place,* while not contributing significantly to the efficiency of the system.

The exception to the granting of protection *sur place* should be applied strictly and cautiously, as is the case for all exceptions to rules of EU law which are likely to have an impact on fundamental rights. The CJEU considered exceptions in *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, (C-406/22) from 4 October 2024, where it refers to "the strict interpretation to which provisions having an exceptional character must be subject"[60], drawing on a line of relevant cases.[61]

Recommendations

- Member States should apply the exceptions to the granting of *sur place* protection in a restrictive manner.

Articles 7 and 8: Actors of protection and the internal protection alternative

Articles 7 and 8 of the 2016 QR proposal included far-reaching reforms of the qualification criteria intended to expand the use of the internal protection alternative. The internal protection alternative, also known as the internal flight alternative, is a legal concept incorporated into EU law via the Qualification Directive but not based in international law. Application of the concept allows Member States to refuse to grant international protection on the basis that the applicant could and should have availed themselves of protection in a safe area within the country of origin or residence rather than fleeing. There is no basis in international law for

57 ECRE, Comments on the Proposal for a Qualification Regulation, November 2016, p. 7, available here.

58 Joined cases C-71/11 and C-99/11 *Bundesrepublik Deutschland v. Y and Z* [2012] ECLI:EU:C:2012:518; joined cases C-199/12, C-200/12 and C-201/12 *X, Y and Z v. Minister voor Immigratie en Asiel* [2013] ECLI:EU:C:2013:720, para 79.

59 Case C-222/22 *Bundesamt für Fremdenwesen und Asyl (Conversion religieuse ultérieure*) [2024] ECLI:EU:C:2024:192, para 44.

60 Case C-406/22 *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky* [2024] ECLI:EU:C:2024:841**,** paras 70-71.

61 See, to that effect, Case C-502/13 *Commission v Luxembourg* [2015] ECLI:EU:C:2015:143, para 61; and C-216/22 *Bundesrepublik Deutschland (Admissibility of a subsequent application)* [2024] EU:C:2024:122, para 35 and the case law cited.

imposing this obligation yet under EU law the Member State may issue a rejection of the application as inadmissible in these circumstances. An additional concern arises because there are far larger numbers of internally displaced people than refugees, including in all the major displacement crises.[62] This means that local authorities and humanitarian actors are frequently unable to provide adequate protection in practice to those seeking protection internally, even if it is theoretically available.

The 2016 proposal envisaged an expanded and mandatory use of the internal protection alternative, including when non-state actors and international organisations are the actors of protection. While the proposal reflected the fact that many different actors may be playing a security and governance role within a state – particularly in situations of conflict – ECRE raised serious concerns about the compatibility of the provisions with international law and the likely human rights risks that would arise. The final text was amended compared to the proposal, but some of these concerns remain; while Article 7 introduces safeguards, these are outweighed by the expanded use of the internal protection alternative provided for in Article 8.

Actors of protection

First, Article 7 builds on the related article of the QD, which established that actors beyond the state could be actors of protection. Following amendments from the European Parliament, in QR Article 7(3) the language has been changed from "parties or organisations" as actors of protection to "stable, established non-State authorities", and the QD requirement that the entity controls the state or a substantial part of its territory is maintained.[63] International organisations are included among the non-state entities that can be actors of protection.[64]

Second, Article 7(2) explains that protection has to be effective and of a non-temporary nature. It shall be considered to be provided where the actors of protection:

> "…take reasonable steps to prevent persecution or the suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and where an applicant has access to that protection."

The text here echoes the *Abdulla* judgment of the CJEU. Although that judgment concerned cessation of status rather than the application of the internal protection alternative, it nonetheless included guidance on the actions required from actors of protection to establish that protection is available.[65]

QR Article 7(3) further specifies that, when assessing whether an actor controls a substantial part of the country's territory and provides protection, authorities "shall take into account precise and up-to-date information obtained from relevant and available national, Union and international sources" and, where available, the common country of origin analysis and the guidance notes from the European Union Asylum Agency (EUAA).[66]

Further indications of the standard of protection to be in place can be derived from the Recitals, with Recital (32) specifying that the actors of protection must be "able and willing" to provide protection, and Recital (34) requiring the authorities to take into account whether the applicant would be "able to cater for their basic needs in relation to access to food, hygiene and shelter

62 UNHCR 'Global Trends Report', 2024, available here.
63 QD Article 7(3).
64 QR Article 7(3).
65 Case C-175/08 *Salahadin Abdulla and Others* [2010] ECLI:EU:C:2010:105.
66 QR Article 7(3).

in the context of local circumstances" when considering whether the applicant could be reasonably expected to settle in the area.

Mandatory application of the internal protection alternative

Third, in the 2016 proposal, Article 8 expanded the use of the internal protection alternative by rendering its application mandatory in most circumstances. In the final text, following amendments proposed by the Parliament and agreed by the co-legislators, application of the internal protection alternative is mandatory only when the state is not the actor of persecution. In contrast, when the state (or an agent of it) is the actor of persecution, a presumption is created that effective protection is not available, with certain limited exceptions.

Article 8(1) and (2) introduce the distinction based on whether the state or its agents or a non-state actor is the actor of persecution or serious harm as follows:

> "Where the State or agents of the State are not the actors of persecution or serious harm, the determining authority shall examine, as part of the assessment of the application for international protection, whether an applicant is not in need of international protection because the applicant can safely and legally travel to and gain admittance to a part of the country of origin and can reasonably be expected to settle there and whether, in that part of the country, the applicant:
>
> (a) has no well-founded fear of being persecuted or does not face a real risk of suffering serious harm; or
> (b) has access to effective and non-temporary protection against persecution or serious harm.[67]

Where the state or an agent of the state is the actor of persecution or serious harm, the authorities "shall presume that effective protection is not available to the applicant and no examination [of the internal protection alternative] need be carried out".[68]

Safeguards and conditions for the use of the internal protection alternative

In a second paragraph, Article 8(2) provides an exception whereby the Member State may carry out a review of internal protection alternatives as per Article 8(1) in the case that the state (or an agent thereof) *is* the actor of persecution so long as the risk of persecution stems from a state actor of persecution that has power only over a "specific geographic area" or where the state as a whole only has control over "certain parts" of the country.[69]

Article 8(3) introduces three clarifications which serve as safeguards in all application of the internal protection alternative:

- The authorities shall carry out an examination for internal protection alternatives only once they have established that international protection would otherwise apply to the applicant.[70]
- The burden of proof falls on the authorities to demonstrate that the internal protection alternative is available for the applicant.[71]

67 QR Article 8(1).
68 Ibid. Article 8(2).
69 Ibid. Article 8(2).
70 Ibid. Article 8(3).
71 Ibid. Article 8(3).

- The applicant is entitled to present evidence and submit elements indicating that such an alternative is not available to them and the authorities shall take those into account.[72]

Article 8(4) expands the sources of information that authorities should respect in their assessment.[73]

Article 8(5) expands on the elements which the authorities must take into account, including:

- The general circumstances prevailing in part of the country explicitly includes "the accessibility, effectiveness, and durability of the protection".[74]
- The personal circumstances of the applicant include:
    - An open list of factors "such as health, age, gender, including gender identity, sexual orientation, ethnic origin, and membership of a national minority".[75]
    - Whether that applicant would be able to cater for their own basic needs.[76]

Article 8(6) introduces considerations for unaccompanied children, underlining that the best interests principle applies, and emphasising that sustainable and appropriate care and custodial arrangements must be available to them.[77]

As per the rules on the internal protection alternative in the QD, the applicant must be able to "safely and legally travel to and gain admittance to" the area where protection is to be provided, and it is a requirement that they can "reasonably be expected to settle there". As per Recital (34), when considering whether the applicants can be reasonably expected to settle there, the authorities must take into account whether they "would be able to cater for their own basic needs in relation to access to food, hygiene and shelter in the context of local circumstances in their country of origin."

Implementation considerations

ECRE recalls that the concept of the internal protection alternative does not stem from the 1951 Refugee Convention and is deemed inconsistent with regional refugee norms in other parts of the world.[78] ECRE therefore questions whether the mandatory use of the internal protection alternative (albeit only where the state or agents thereof are *not* the actors of persecution or serious harm) and the possibility to conduct such a test in some circumstances even where the state or agents thereof *are* the actors of persecution or serious harm, are "fully in line with the Geneva Convention", as stated the Explanatory Memorandum.[79]

Independent research reveals that the interpretation of the internal protection alternative across Member States is subject to wide disparity which generates the risk that these provisions exacerbate divergences rather than contributing to harmonisation.[80]

At the same time, Articles 8(1) to (3) provide important guarantees which have not thus far been consistently applied by the Member States when using the concept. For example, in

72 Ibid. Article 8(3).
73 Ibid. Article 8(4).
74 Ibid. Article 8(5)(a).
75 Ibid. Article 8(5)(b).
76 Ibid. Article 8(5)(c).
77 Ibid. Article 8(5)(d).
78 See for example Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (10 September 1969) 1001 UNTS 45, Article 1(2), available here.
79 QR Explanatory Memorandum, p. 3.
80 ECRE, Asylum Aid, Dutch Council for Refugees and Hungarian Helsinki Committee 'Actors of protection and the application of the internal protection alternative', 2014, available here.

contrast to Member States' practice insofar as it has been analysed,[81] it lies with the authorities to prove the existence of an internal protection alternative, and the applicant cannot be required to prove the inapplicability of the concept in their case. The clarifications in Article 8(5) further reinforce the responsibilities of the Member State, with additional considerations favouring the applicant. The text incorporates the jurisprudence of the ECtHR, according to which the application of the concept must always be guided by safety considerations, including whether the person can safely travel to the suggested location, whether they will be admitted, and whether they will be able settle successfully.[82]

While ECRE supports the drawing of a distinction between state and non-state actors of persecution and of protection, it should be noted that it is still possible for Member States to apply the internal protection alternative when the persecution or serious harm emanates from the state or its agents. Allowing this option at all undermines the distinction rightly drawn between non-state and state actors and contradicts the presumption that protection cannot be available within the territory when the state itself is the actor of persecution. It also allows at least in theory for a situation where the state is both the actor of persecution and of protection.

Despite the improvements of related procedural guarantees, ECRE remains opposed to the application of the internal protection alternative to both state and non-state actors alike. The concept adds an additional criterion to eligibility for refugee status beyond the criteria foreseen in Article 1 of the Refugee Convention.[83] In so doing, both the mandatory and optional use of the internal protection alternative test creates the risk of leaving applicants who are entitled to protection under the Refugee Convention without protection under EU law.

Allowing the applicant to challenge the use of the concept offers scant protection in a context where applicants struggle to access legal assistance. As elsewhere in the Pact, the changes add complexity and shift the onus to the applicant. The pattern is to introduce mandatory restrictive measures that limit access to protection but to allow the applicant to challenge the application of the measure in certain circumstances as a form of safeguard. In a situation where access to procedural guarantees is a major obstacle, in practice many applicants are unable to use the safeguard, so it is of limited protective value.

Research demonstrates that most Member States never or rarely apply the internal protection alternative when the state or agents thereof are actors of persecution.[84] In accordance with those findings, special emphasis should be put on the presumption that effective protection is not available to the applicant where the state or agents of the state are the actors of persecution or serious harm, and Member States should choose not to apply the internal protection alternative in these situations. The exception for localised risks in the second part of Article 8(2) should be subject to a high threshold, building on the strong presumption that effective protection is not available in such cases. As per UNHCR Guidelines, the concept of the internal protection alternative should "not be invoked in a manner that would undermine important human rights tenets" of the international protection regime.[85]

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81 ICF *Evaluation of the application of the recast Qualification Directive (2011/95/EU) – Final report*, Publications Office, 2019, available here.

82 *J.K. and Others v Sweden* (Application no. 59166/12) (ECtHR, 23 August 2016), para 82.

83 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, Article 1.

84 UNHCR *Guideline on International Protection No. 4: "Internal Flight or Relocation Alternative"* (23 July 2003), para 7, available here. No more recent research has been published.

85 Ibid.

Recommendations

- Member States should not choose to apply the internal protection alternative when the state or agents thereof are the actors of persecution. To do so, would undermine the usually correct presumption that protection is not available in these circumstances, and also add considerable complexity to decision-making, thus requiring additional resources.

Chapter III: Qualification for Being a Refugee

Articles 9 and 10: Acts of persecution and reasons for persecution

Articles 9 and 10 largely incorporate the provisions of the Refugee Convention on definitions of acts of persecution and reasons for persecution. There are very limited changes compared to the QD.

Article 10(1)(d)(i) adds to the concept of "membership of a particular social group" such that it includes membership of a group whose members share or *who* are *perceived* to share a common characteristic. The change means that it will be sufficient that the group are perceived to share the characteristic.

Unfortunately, the text maintains the second requirement such that the group "has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society" (Article 10(d)(ii)). This means that the perception of the group as a different by the society is always required.

ECRE argued for a revision to Article 10(1)(d) such that the concept of "membership of a particular social group" be satisfied either by (1) protected characteristics or by (2) social perception, rather than requiring both.[86] This would reflect a more accurate reading of international refugee law and is, for instance, espoused in the UNHCR Guideline on International Protection and adopted in the transposition of the Directive in Ireland.[87]

QD Article 10(1) states that sexual orientation as a basis for group membership cannot "be understood to include acts considered to be criminal in accordance with national law of the Member States".[88] The QR now omits this restriction.[89] QR Article 10(1) also expands gender-related considerations to explicitly include "gender expression" in addition to gender identity.[90]

QR Article 10(3) introduces a new prohibition against the expectation that applicants renounce behaviours, convictions, or practices inherent to their identity in order to avoid persecution in their country of origin.[91] As such, it integrates the relevant case law establishing that applicants cannot be required to hide the characteristic which constitutes the reason for persecution, notably *XYZ* (C-199/11).[92]

The Article should be read in conjunction with Recital (28) which codifies CJEU jurisprudence finding that the applicant should not be deemed to lack credibility exclusively because they did not rely on their declared sexual orientation at the outset, when setting out the persecution

86 UNHCR *Guidelines on International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, para 11.
87 Ibid. Section 8(d); Irish International Protection Act; Article 10(d) Greek Presidential Decree 141/2013.
88 QD Article 10(1).
89 QR Article 10(1).
90 Ibid.
91 QR Article 10(3).
92 CJEU, *XYZ*.

ground. Similarly, as per Recital (29), the convictions, beliefs or orientations of the applicant should be taken into account even if they were fully or partially concealed in the country of origin.

In addition, Recital (40) incorporates further guidance and examples of particular social groups and Recital (41) gives the example of criminal laws which "specifically target lesbian, gay, bisexual, transgender and intersex persons" which "can mean that those persons are to be regarded as forming a particular social group". Further integrating case law, Recital (42) forbids "detailed questioning and tests as to sexual practices" in sexual orientation and gender identity-based persecution claims.

Implementation considerations

Interpretation

Articles 9 and 10 are parts of the QR where it is particularly important to respect the obligation to interpret secondary legislation in line with the "relevant treaties" of international law, as stipulated in TFEU Article 78(1). Different groups that may face persecution are covered by international treaties, most of which have been signed and ratified by all EU Member States, for instance, the Convention on the Rights of Persons with Disabilities (CRPD) or the Convention on the Rights of the Child (CRC). A rigorous application of the Treaty requirement may in some circumstances allow for an extension of the argumentation of the CJEU's judgment in *DAB* (C-621/21) concerning women as a social group to other categories of applicant, for instance, using the CRPD by analogy.

In *DAB,* the CJEU finds that the circumstances in country for a particular group, in that case women in Afghanistan, are such that there must be a presumption that the members of that group qualify for refugee status. This suggests changes are required to Member State practice to ensure consistency in interpretation of Article 9 and avoid divergences in the granting of protection. With reference to other international treaties, there could be situations in which the same holds true for other groups of applicants subject to the worst forms of persecution on the basis of the membership of the group, with EU law read in conjunction with the treaty relevant to the group, as described above.

ECRE welcomes the addition of "gender expression", which explicitly protects individuals whose outward expression of gender differs from societal norms. ECRE also welcomes the prohibition on expecting applicants to renounce parts of their identity in order to avoid persecution in their country of origin. Such prohibition codifies CJEU jurisprudence in cases relating to religion and sexual orientation.[93]

Women as a social group

Implementation of the QR should reflect the significant jurisprudence on women as a social group from 2024. In *DAB* (C-621/21), the CJEU found that QD Article 10(1)(d) must be interpreted as meaning that, depending on the circumstances in the country of origin, women as a whole may be regarded as belonging to "a particular social group", as a "reason for persecution" capable of leading to the recognition of refugee status.

This is in addition to the established jurisprudence according to which more specific groups of women who share an additional common characteristic are to be regarded as a particular social group.[94] In relation to QD Article 9(3), it found that article must be interpreted as meaning that where an applicant claims a fear of being persecuted in the country of origin by non-state actors, it is not necessary to establish a link between one of the reasons for persecution in

93 CJEU, *Bundesrepublik Deutschland v. Y and Z* and CJEU, *X, Y and Z v. Minister voor Immigratie en Asiel*.
94 CJEU, *DAB (femmes victimes de violence domestiques).*

Article 10(1) and such acts of persecution if a link can be established between one of the reasons for persecution and the absence of protection from those acts by the actors of protection referred to in Article 7(1), for example a failure to protect due to membership of a particular social group.

In addition, the Court found that QD Article 15(a) and (b) must be interpreted as meaning that the concept of "serious harm" covers the real threat to the applicant of being killed or subjected to acts of violence inflicted by a member of his or her family or community due to the alleged transgression of cultural, religious or traditional norms. In these circumstances, recognition of subsidiary protection status, within the meaning of Article 2(g) could follow.

In June of 2024, the CJEU further consolidated the line of jurisprudence with *Staatssecretaris van Justitie en Veiligheid (Femmes s'identifiant à la valeur de l'égalité entre les sexes)* (C-646/21). The Court found that QD Article 10(1)(d) and (2) must be interpreted as meaning that, depending on the circumstances in the country of origin, women who are nationals of that country, including minors, who share as a common characteristic the fact that they have genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may be regarded as belonging to a particular social group, constituting a reason for persecution capable of leading to the recognition of refugee status.[95]

Finally, In October 2024, in *Bundesamt für Fremdenwesen und Asyl and others (Femmes Afghanes)* (joined cases C-608/22 and C-609/22), the Court found that Article 9(1)(b) must be interpreted as meaning that an accumulation of discriminatory measures in respect of women adopted or tolerated by an "actor of persecution" within the meaning of Article 6 comes within the definition of "act of persecution", since the measures by their cumulative effect undermine human dignity as guaranteed by Article 1 of the CFREU. Such measures may consist, inter alia, in depriving women of any legal protection against gender-based and domestic violence and forced marriage, requiring them to cover their entire body and face, restricting their access to healthcare and freedom of movement, prohibiting them from engaging in gainful employment or limiting the extent to which they can do so, prohibiting their access to education, prohibiting them from taking part in sports, and excluding them from political life.

Article 4(3) must be interpreted as not requiring the competent national authority to take into consideration in the individual assessment of the application factors other than those relating gender and nationality when assessing whether the discriminatory measures amount to acts of persecution within the meaning of Article 9(1).[96]

These lines of jurisprudence will remain binding when the QR comes into full application in June 2026 as these sections of the text have not changed.

Recommendations

- Member States should interpret Articles 9 and 10 in line with relevant international treaties, including the CRC and CRPD, where relevant to assessing persecution and particular social groups, as well as taking into account relevant CJEU jurisprudence.
- Member States should ensure consistent and gender-sensitive application of the Qualification Regulation, reflecting that women and other groups affected by systematic discrimination may qualify as particular social groups depending on the country context.
- Member States should recognise that persecution may arise from the cumulative effect of discriminatory measures and should not require applicants to renounce aspects of their identity to avoid such persecution.

95 Case C-646/21 *Staatssecretaris van Justitie en Veiligheid (Femmes s'identifiant à la valeur de l'égalité entre les sexes)* [2024] ECLI:EU:C:2024:487.

96 Joined Cases C-608/22 and C-609/22 *Bundesamt für Fremdenwesen und Asyl and others (Femmes Afghanes)* [2024] ECLI:EU:C:2024:828.

- Member States should ensure that the link between the reason for persecution and protection needs is assessed in line with Article 9(3), including recognising that the absence of State protection may establish the required nexus.
- Member States should update decision-making guidance and training to reflect the clarified standards for assessing acts of persecution and membership of a particular social group, in order to promote consistent application across cases.

Article 11: Cessation of refugee status

Article 11 sets out the grounds for cessation of refugee status. It includes the established cessation grounds that carry over from the QD and derive from the Refugee Convention, whereby protection ceases if the person has:

- voluntarily re-availed themselves of the protection of the country of nationality;
- voluntarily re-acquired nationality;
- acquired a new nationality and protection of that country; or
- voluntarily re-established themselves in the country they left.

In the QR, two clauses are added which apply to nationals and stateless people respectively (QR Articles 11(1)(e) and (f)). According to these provisions, refugee status will cease if the circumstances in connection with which the person has been recognised as a refugee have ceased to exist thus precluding them from refusing to avail themselves of the protection of the country of nationality (e) or of former habitual residence (f).[97]

According to QR Article 11(2), the authorities must now take into account "precise and up-to-date information obtained from relevant and available national, Union and international sources" and, where available, the common country of origin analysis and the guidance notes from the EUAA,[98] when considering whether the change of circumstances is significant and permanent enough that the fear of persecution or risk of serious harm is no longer well-founded.[99]

Recital (53) notes that travel to the country of origin could serve as an indication that the refugee has re-availed themselves of the protection of the country of origin or re-established themselves there. However, this will depend on the circumstances, including the length and purpose of the stay.

Implementation considerations

Article 11 should be implemented in accordance with the case law of the CJEU and notably the *Abdulla*[100] and *OA* judgments. Following UNHCR guidance on the interpretation of the cessation grounds in the Refugee Convention, in *Abdulla*, the Court found that refugee status ceases only when "significant and non-temporary" changes in circumstances have occurred such that the grounds for persecution no longer exist and no other grounds have arisen. The standard of proof required for assessing new grounds of persecution is the same as for the original examination of the application.

In the assessment of cessation grounds, the CJEU judgment then goes beyond the basic "mirror image" approach of requiring that the grounds for persecution no longer exist. The authorities must also establish the presence of actors of protection and that these actors have

97 QR Article 11(1)(e)-(f).
98 QR Article 11(2)(a); Article 16(2)(a).
99 Ibid. Article 11(2)(b).
100 CJEU, *Abdulla.*

taken reasonable steps to prevent persecution. This includes ensuring an effective legal system for detecting, prosecuting and punishing acts of persecution.

In *OA*, the Court affirms the aforementioned standard of protection that must be present within the country in order for cessation to be applied and also establishes that support provided by private actors such as family or clans falls short of what is required and should therefore not be included in the assessment of protection provided by the actor of protection (also relevant for Articles 9 and 10, above). For more information, see ECRE's 2025 Legal Note on cessation.[101]

Recommendations

- Member States must respect the jurisprudence of the CJEU in implementation of provisions on cessation under Article 11. Specifically, they should apply the "beyond the mirror image" approach, which requires the state to demonstrate that actors and standards of protection are in place, and not merely that the reasons for persecution are no longer present.

Article 12: Exclusion from refugee status

Article 12 maintains the standard grounds for exclusion derived from the Refugee Convention and previously incorporated into the QD.

> "1. A third-country national or a stateless person shall be excluded from being a refugee where that third-country national or stateless person:
>
> (a) falls within the scope of Article 1(D) of the Geneva Convention […]
>
> (b) is recognised by the competent authorities of the country in which third-country national or stateless person has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or equivalent rights and obligations.
>
> 2. A third-country national or a stateless person shall be excluded from being a refugee where there are serious reasons for considering that that third-country national or stateless person:
>
> (a) has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) has committed a serious non-political crime outside the country of refuge prior to that third-country national or stateless person's admission as a refugee, which means the time of granting refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
>
> (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble to and Articles 1 and 2 of the Charter of the United Nations."

A new element is introduced at Article 12(4), according to which "the determining authority shall exclude the applicant from [international protection] without performing a proportionality

[101] ECRE 'The Cessation of International Protection and Review of Protection Statuses in Europe' Legal Note 17, April 2025, available here.

assessment"[102] once they have established that the exclusion grounds in Articles 12(2) or (3) are applicable, which cover the most serious crimes. This must be done based on an assessment of the seriousness of the crimes and the individual's responsibility, and "taking into account all the circumstances surrounding those crimes or acts and the situation of that person".[103] Under Article 12(5) the capacity of minors for criminal responsibility in the provisions of national law on the age of criminal liability should also be part of the assessment.[104]

Implementation considerations

UNWRA protection / Article 12(1)(a)

Article 12(1)(a) provides that a person "shall be excluded from being a refugee" if they fall "within the scope of Article 1(D) of the Geneva Convention"[105] for those "at present receiving protection from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance", covering Palestinian refugees.[106] A body of case law has emerged clarifying the proper assessment to be conducted under this provision as well as on aspects of its applicability.

In *NB and AB*,[107] the Court clarified that when assessing the cessation of UNRWA protection the authorities must consider both the circumstances at the time of the applicant's departure and at the time of the refugee status assessment, and they must prove that return and adequate protection are now possible. It is not necessary for the applicant to show intent to harm; it is enough that UNRWA can no longer ensure adequate living conditions, though support from NGOs formally cooperating with UNRWA may be relevant. In *Alheto*, the CJEU clarified that the cessation provision of Article 12(1)(a) has direct effect and applies even if the individual has not invoked it.[108] Lastly, in the judgment in *Germany v XT*[109], *SN and LN*[110] and *OFPRA*,[111] the Court clarified how the assessment of the cessation of protection should be conducted in certain cases.

UNHCR also provided clarification on the rules for implementing article 1(D) in this context. This authoritative interpretation of the Geneva Convention should be properly taken into account when implementing Art. 12 (1)(a) QR.[112]

Commission of a crime

Although Article 12(4) and (5) include the requirement to assess and take into account the circumstances of the crime, the Regulation nonetheless has potentially far-reaching consequences by providing that the authorities should apply the exclusion criteria without weighing their assessment against the applicant's well-founded fear of persecution or serious

102 QR Article 12(4).
103 Ibid.
104 Ibid. Article 12(5).
105 Ibid. Article 12(1)(a).
106 Refugee Convention, Article 1(D); UN General Assembly Resolution 194 (III) of 11 December 1948; UN General Assembly Resolutions 2252 (ES-V) of 4 July 1967.
107 Case C-349/20 *NB, AB* [2022] ECLI:EU:C:2022:151.
108 Case C-585/16 *Alheto* [2018] ECLI:EU:C:2018:584.
109 Case C-507/19 *Bundesrepublik Deutschland (Statut de réfugié d'un apatride d'origine palestinienne)* [2021] ECLI:EU:C:2021:3.
110 Case C-563.22 *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite (Statut de réfugié - Apatride d'origine palestinienne)* [2024] ECLI:EU:C:2024:494.
111 Case C-294/22 *OFPRA (Statut de réfugié d'un apatride d'origine palestinienne)* ECLI:EU:C:2023:733.
112 UNHCR, Assessment of the international protection needs of asylum-seekers of Palestinian origin in Belgium: Analysis of selected aspects and recommendations, January 2024, available here.

harm at that stage.[113] A number of elements need to be taken into account when implementing the article in order to ensure respect for the principle of *non-refoulement* and other provisions of EU and international law.

First, the article draws on the CJEU's ruling in *B and D*[114] however in that case the CJEU's finding was premised on the fact that the Member State's initial assessment of the seriousness of the acts committed and the person's responsibility had already taken into account all the circumstances surrounding the acts and the situation of the person, including the possible consequences of exclusion. Applying the case would require that Member States to ensure that proportionality has been addressed during the assessment procedure if they decide not to apply the proportionality test after establishing the seriousness of the act.

This interpretation is strengthened by the Court's findings in subsequent cases, where it has required that other elements of the personal circumstances of the applicant be subject to a proportionality assessment, even if a separate proportionality assessment was found to be unnecessary by application of *B and D.* In *Galte* (C-63/24), the CJEU stated that:

> "[…] the fact that the Court has held that the exclusion from refugee status pursuant to Article 12(2)(b) of Directive 2011/95 is not dependent on the person concerned representing a present danger to the host Member State (see, to that effect, judgment of 2 May 2018, K. and H.F. (Right of residence and alleged war crimes), C-331/16 and C-366/16, EU:C:2018:296, paragraph 50 and the case-law cited) or on an assessment of proportionality, implying as that does a fresh assessment of the level of seriousness of the acts committed (see, to that effect, judgment of 9 November 2010, B and D, C-57/09 and C-101/09, EU:C:2010:661, paragraph 109) does not preclude the taking into account of the fact that the person concerned has served his or her sentence in order to establish whether or not he or she is covered by that ground for exclusion."[115]

In *B and D*, the CJEU also underlined that, "It is important to note that the exclusion of a person from refugee status pursuant to Article 12(2) of Directive 2004/83 does not imply the adoption of a position on the separate question of whether that person can be deported to his country of origin."[116] The Court separated the stages of exclusion from status and the removal of the person, and the tests that apply in each case. Thus, the proportionality assessment and other relevant examinations, should still take place in relation to removal decisions, not least to ensure protection from *refoulement*.

In the 2016 proposal, Article 12(4) held that the exclusion of a person from refugee status shall depend exclusively on whether the grounds for exclusion are met and shall not be subject to additional proportionality assessment "in relation to the particular case", and consequently did not include an assessment of seriousness or individual responsibility.[117] The wider assessment was added during the negotiations, reflecting the intention of the co-legislators to more accurately codify international and EU law.

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113 ECRE Comments on the QR Proposal, p. 12.
114 QR Explanatory Memorandum, p. 13.
115 Case C-63/24 *Galte* [2025] ECLI**:**EU:C:2025:292**,** para 42.
116 Ibid. para 110.
117 QR Proposal Article 12(4).

Recommendations

- The relevant authorities should assess the consequences of exclusion from international protection during the assessment of the seriousness of the crime, as part of examining "all the circumstances surrounding those crimes or acts and the situation of that person". If this does not take place, the proportionality assessment cannot be excluded at the point of deciding on exclusion.

Article 14: Withdrawal of refugee status

One of the main reforms brought about by the QR is changes to Member States' powers to revoke, review and refuse to review international protection statuses, termed "withdrawal" of status.

Article 14 concerns withdrawal of refugee status and sets out five situations in which withdrawal of status is mandatory.

First, similarly to the QD[118] it obliges Member States to withdraw status when:

- Grounds for cessation of status apply as per Article 11 (Article 14(1)(a)).[119]
- Grounds for exclusion from status apply or should have been applied (Article 14(1)(b)).[120]
- Status was granted due to misrepresentation or omission of facts by the applicant (Article 14(1)(c)).[121]

The Article then adds points which render mandatory the withdrawal of refugee status when:

- There are reasonable grounds for regarding the person as a danger to the security of the Member State (Article 14(1)(d)); and
- The person has been convicted of a "particularly serious crime" and constitutes a danger to the community of the Member State (Article 14(1)(e)).[122]

These two grounds were optional under the QD (as "may" clauses under QD Article 14(4)). In addition, QR Article 14(2) incorporates the QD provision which allows Member States to "not grant" refugee status where the decision has yet to be taken and either of these two grounds apply.

Article 14(3) maintains the safeguard also present in the QD requiring that those whose refugee status is withdrawn or not granted under Article 14 points (1) and (2) are nevertheless "entitled to the rights set out in, or similar to those set out in, Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention" provided that these persons are present in the Member State.[123]

Article 14(4) then requires that the withdrawal assessment is carried out by the determining authority and on an individual basis. It also adds a cross-reference to APR Article 66 which provides the following guarantees for beneficiaries facing withdrawal of status:

- Information in writing that their status is being reconsidered and of the reasons for such reconsideration.[124]

118 QD Article 14(1); QD Article 19(1).
119 QR Article 14(a); QR Article 19(1)(a).
120 Ibid. Article 14(b); QR Article 19(1)(b).
121 Ibid. Article 14(c); QR Article 19(1)(c).
122 QR Article 14(d)-(e).
123 Ibid. Article 14(3).
124 APR Article 66(1)(a).

- Information on the obligation to cooperate.[125]
- Information on the consequences of not cooperating with the authorities.[126]
- The right to challenge the withdrawal of status.[127]

APR Article 66 also provides that the authorities:

- Must take into account "precise and up-to-date information obtained from relevant and available national, Union and international sources" and, where available, the common country of origin analysis and the guidance notes from the EUAA.[128]
- Are forbidden from obtaining information from actors of persecution or serious harm in a manner which would inform them that the beneficiary's status is under review.[129]

Implementation considerations

Status and refoulement

The changes to Article 14 on withdrawal constitute a new approach to security cases and one that exacerbates inconsistency with international law.

First, Article 14(2) allows Member States to "decide not to grant refugee status" in situations where Article 14(1)(d) or (e) apply, which essentially introduces into EU law grounds for exclusion beyond those permitted by the Refugee Convention. Although the point is under the article on withdrawal rather than exclusion, because it concerns situations where protection has yet to be granted it functions as an exclusion clause, and one operating outside the scope of the exclusion clauses foreseen in the Convention.[130]

Second and relatedly, Article 14 reflects the stronger protection from *refoulement* established in EU law. Under the Refugee Convention Article 33, protection from *refoulement* is removed when the person is a security risk however they are not excluded from refugee status. Essentially, they are still a refugee because they meet the eligibility criteria and the acquisition of status is simply declaratory of that fact, however a state may refoule them if they constitute a security risk of a certain level.

The QD incorporates these derogations from the principle of *non-refoulement*: at QD Article 21 Member States are allowed but not required to refoule in these security cases. They are also allowed but not required to revoke, end or refuse to renew or grant a residence permit.

Under the QR, Article 21 has been amended to remove reference to the derogations from the Refugee Convention, referring instead to respect for the principle of *non-refoulement* "in accordance with Union and international law". This reflects the absolute prohibition of refoulement established by EU and ECHR law.

Wording from the derogations in Article 33 of the Refugee Convention are instead included in Article 14 as grounds for withdrawal of status rather than as derogations from the principle of *non-refoulement.* The provisions in EU law are thus the inverse of the Refugee Convention: status can be removed but *refoulement* is not allowed, rather than the Refugee Convention formula whereby refugee status is declared but *refoulement* is allowed.

125 Ibid. Article 66(1)(b).
126 Ibid. Article 66(1)(c).
127 Ibid. Article 66(1)(d).
128 Ibid. Article 66(2)(a).
129 Ibid. Article 66(2)(b).
130 ECRE Comments on the Qualification Directive recast, p. 17.

The stronger protection from *refoulement* reflects the jurisprudence of both European courts, and notably the finding of the CJEU in *M* (joined cases C-391/16, C-77/17 and C-78/17) of 2 May 2019, that the *non-refoulement* obligations under the CFREU apply even when Article 33(2) of the Refugee Convention would justify an exception. The same finding was reiterated in the *AA, XXX* and *MA* cases (C-663/21, C-8/22 and C-402/22) of July 2023 in which the Court reiterated that the CFREU prohibits in "absolute terms" torture and inhuman or degrading treatment and removal to a country where these risks are present "irrespective of the conduct of the person concerned". In *AA* the Court confirms that "EU law provides more extensive international protection for the refugees concerned than that guaranteed by the convention."

Proportionality assessment

The provisions in Article 12 on proportionality assessments also have to be read in light of the EU legal principle of proportionality, the application of which is reflected in relevant CJEU case law.[131] In *AA*, the CJEU found that Member States are required to balance the danger posed by the third country national to a fundamental interest of the Member State and the consequences on their rights of withdrawal of status.[132] Revocation is "conditional on the competent authority establishing that the revocation constitutes a proportionate measure having regard to the danger posed by the third-country national to a fundamental interest of the society of the Member State where that third-country national is present."

ECRE also notes that the CJEU found that "withdrawing refugee status" under QD Article 14(2) must be interpreted as withdrawing refugee status and the ensuing rights *under the directive* rather than withdrawing refugee status (and the ensuing rights) *under international law, the Charter, or the Treaties*. This means that, as per QR Article 14(3), those persons would still be entitled to some of the rights laid down in the Refugee Convention.[133] In these circumstances, national protection statuses can again play a useful role, allowing states to provide a legal status when none is available in EU law. Otherwise, there is a risk that people who cannot be returned are left in limbo following a withdrawal procedure. National statuses help to ensure legal certainty and access to rights in practice.

Definitions of national security threats

In the implementation of the new rules on mandatory withdrawal of status at Article 14(1)(d) and (e) the Member States must follow the jurisprudence of the CJEU on definitions of danger to national security and to the community.

In a series of cases, *AA*, *XXX*, and *MA* (C-663/21, C-8/22 and C-402/22), the Court found that establishing that the person constitutes a danger to the community requires conviction by final judgment of a particularly serious crime *and* determination that the person poses a "genuine, present and sufficiently serious" threat to one of the fundamental interests of the society.

A "particularly serious crime" is further defined as one of the crimes which most seriously undermine the legal order of the community. The crime(s) should be assessed individually rather than assessing the threat based on the cumulation of less serious crimes, i.e. one or more of the crimes must meet the threshold of seriousness constituting a threat to one of the fundamental interests of society.

131 Case C-8/22 *XXX* [2023] ECLI:EU:C:2023:542, para 67.
132 Case C-663/21*Bundesamt für Fremdenwesen und Asyl v. AA* [2023] ECLI:EU:C:2023:540.
133 Joined Cases C-391/16, C-77/17 and C-78/17 *M and Others v Commissaire général aux réfugiés et aux apatrides* [2019] ECLI:EU:C:2019:40, para 99.

The jurisprudence of the CJEU also interprets the standards required in relation to threats to national security. The Court found that an individual (threat) assessment is required in *HT, K* and *HF* (C-373/13*,* joined cases C-331/16 and C-366/16), and the level of security threat is set by *Chlebny, JN* and *HT*. In terms of procedural matters, the asylum authorities must be involved and able to conduct thorough assessments including by adapting their methods of evaluating evidence and documents (F. C-473/16). Moreover, in line with ECtHR jurisprudence,[134] the rule of law requires that the concerned individual is able to challenge the government's assertion that national security is at stake and national courts must be able to scrutinise whether the concept is interpreted in a manner that is either unlawful or contrary to common sense and arbitrary.

When the assessment of security threat relies on classified information, the CJEU found in *ZZ*[135] and *Kadi*,[136] that minimum safeguards must be applied, and that techniques and rules of procedural law should be in place to ensure compliance with procedural rights (including the right to be heard). There must be an application of the adversarial principle, judicial review of the existence and validity of reasons to ascertain the legality of the decision, and review of disclosure, with full access to file for the judge if this is not possible. In *GM*,[137] the Court explained what constitutes the "essence of the grounds" (minimum content of reasons for the decision) which must be provided if classification is upheld.

Recommendations

- The EUAA should continue its training series on rules in cases where national security issues arise, given the persistence of unlawful practice.
- The Commission should pay particular attention to spurious claims of national security concerns and lack of respect for CJEU jurisprudence in this area.

Chapter IV: Qualification for Subsidiary Protection

Article 15: Serious harm

Article 15 incorporates the provisions on serious harm largely as per the QD, albeit with some adaptation based on case law. The Regulation addresses the tension within the grounds for subsidiary protection in Article 15(c) whereby a balance has to be struck between the requirement that the applicant is experiencing a serious and "individual" threat while at the same time the threat stems from "indiscriminate" violence. However, the balancing is done through Recital (52), rather than through a clear-cut amendment of Article 15(c).

Thus, according to Recital (52), following the *Elgafaji* case[138], the "determining authorities should not require applicants to adduce evidence that they are specifically targeted" due to their personal circumstances. Again incorporating *Elgafaji*, the Recital goes on to state that:

- The level of indiscriminate violence required to meet the threshold is lower when applicants are able to show that they are specifically affected due to factors related to their personal circumstances.

134 *C.G. and Others v. Bulgaria* (App no. 1365/07) (2008); *Ljatifi v. the former Yugoslav Republic of Macedonia* (App no. 19017/16) (2018).
135 Case C-300/11 *ZZ v Secretary of State for the Home Department* [2013] ECLI:EU:C:2013:363.
136 Joined Cases C-402/05 and C-415/05 *P Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECLI:EU:C:2008:461, para 337.
137 Case C-159/21*GM* [2022] ECLI:EU:C:2022:708.
138 Case C-465-07 *Elgafaji* [2009] ECLI:EU:C:2009:94 available here: para 35.

- The existence of indiscriminate violence alone is "exceptionally" sufficient to trigger subsidiary protection when it rises to such a high level that there are substantial grounds for believing that civilians returned would "face a real risk of being subjected to serious harm" solely due to their presence on the territory.

In addition, Recital (51) specifies that the situation of armed violence does not have to meet the definition of an internal armed conflict in International Humanitarian Law, following the CJEU's judgment in *Diakite*.[139]

Implementation considerations

While it is unfortunate that the Article itself is not amended, the codification of the main elements of *Elgafaji* in Recital (52) is important. It regards to related judgments, in *CF and DN*, the CJEU found that national legislation cannot rule out the granting of protection on the basis that civilians are not being specifically targeted due to personal circumstances or that the violence has not reached a specific casualty rate. A comprehensive assessment of the individual case is required, covering the applicant's situation and how it relates to the conflict and violence taking place.[140]

Similarly, in *Staatssecretaris van Justitie en Veiligheid Femmes s'identifiant à la valeur de l'égalité entre les sexes)* the CJEU found that in determining eligibility for subsidiary protection status, the determining authority must examine all relevant factors relating to the individual and their personal circumstances, and to the general situation in the country, in order to identify the serious harms that might arise. The authorities must be able to take into account factors other than the "mere fact" of coming from an area of a country where "the most extreme cases of general violence", within the meaning of the ECtHR's judgment in *NA,* occur.[141] In line with these CJEU judgments, QD Article 15(b) must be interpreted as meaning that the intensity of the indiscriminate violence occurring in the applicant's country of origin is not capable of weakening the requirement of individualisation of the serious harm defined in that provision.

The *Elgafaji* interpretation of the ground in Article 15(c) therefore needed to be reconciled with the case law of the ECtHR on Article 3 ECHR, mirrored in the ground foreseen in Article 15(b): "torture or inhuman or degrading treatment or punishment" of an applicant. The ECtHR stated, in multiple instances, that Article 3 ECHR "should not be interpreted so as to require an applicant to show the existence of special distinguishing features if [the applicant] could otherwise show that the general situation of violence in the country of [origin] was of a sufficient level of intensity".[142] However, based on the principle of *effet utile*, the content and meaning of Article 15(c) must differ from that of Article 15(b).[143]

The case law remains binding in application of the QR, and the important requirement that eligibility for refugee status be exhaustively assessed before resorting to subsidiary protection remains part of the QR.

Article 16: Cessation of subsidiary protection status

The provisions on cessation of subsidiary protection status replicate those of the QD (derived in turn from the Refugee Convention), with the small addition of the requirement to take into

139 Case C-285/12 *Diaketé* [2014] ECLI:EU:C:2014:39.
140 Case C-901/19 *CF and DN* [2021] ECLI:EU:C:2021:472.
141 *NA. v. the United Kingdom* (App No. 25904/07) (2008), para 115.
142 *Sufi and Elmi v. United Kingdom* (App Nos 8319/07 and 11449/07) (2011), paras 216 and 218; *F.G. v. Sweden* (App No 43611/11) (2016), para 116; *J.K. v. Sweden*, para 86.
143 Case 26/62 *Van Gend en Loos* [1963] available here.

account relevant and available national, EU and international sources, and, where available, common analysis and guidance notes from the EUAA.

Article 17: Exclusion from subsidiary protection status

The exclusion grounds for subsidiary protection have been adapted compared to the QD. QR Article 17(1) sets out four situations at points (a) to (d) where the person shall be excluded from eligibility for subsidiary protection. These are where there are "serious reasons" for considering the person:

a) Has committed a crime against peace, a war crime or a crime against humanity as defined in international law (unchanged from the QD)
b) Has committed a serious crime prior to arrival or has been convicted of a serious crime after arrival (adapted)
c) Is guilty of acts contrary to the UN Charter (unchanged)
d) Constitutes a danger to the community or national security (adapted).

The QD equivalent of Article 17(1)(b) previously read simply "has committed a serious crime". That has now been adapted to require that if the crime was committed after arrival a conviction must have been secured. Article 17(1)(d), on the contrary, has been expanded as previously the requirement was that the person constitutes a danger in the Member State where they were present rather than constituting a danger in general terms.

As is the case in the QD, the exclusion grounds for subsidiary protection are broader than those that apply for exclusion from refugee status, which mirror the Refugee Conviction. In particular, the fourth ground at Article 17(1)(d) covers a potentially wide set of applicants.

As for Article 12 on refugee status, above, an additional point at Article 17(4) removes the proportionality assessment when the exclusion grounds are applied and, similarly, at Article 17(5), in the case of a child, their capacity and the age of criminal responsibility should be taken into account.

Implementation considerations

As in the case of exclusion from refugee status, the provisions excluding the proportionality assessment must nonetheless be read in light of the recent case law of the CJEU and notably the *AA* case discussed above. The CJEU finds that the Member States are still required to balance the danger constituted by the person against the consequences they would face should status be revoked and removal ordered.

Recommendations

- As above, when deciding on exclusion from subsidiary protection status, Member States must weigh up the risks to the person should their status be removed against the dangers they constitute.

Article 19: Withdrawal of subsidiary protection status

Whereas Article 14 concerns the withdrawal of refugee status, Article 19 includes similar provisions in relation to subsidiary protection status. Withdrawal is mandatory when:

a) Grounds for cessation of status apply as per Article 16 (Article 19(1)(a)).[144]

[144] QR Article 14(a); QR Article 19(1)(a).

b) Grounds for exclusion from status apply or should have been applied in accordance with Article 17 (Article 19(1)(b)).[145]
c) Status was granted due to misrepresentation or omission of facts by the applicant (Article 19(1)(c)).[146]

Per Article 19(1)(b) the broad grounds for exclusion are also grounds for withdrawal of subsidiary protection status, including when there are serious reasons for considering that the person "constitutes a danger to the community or to national security".

A change compared to the QD is a broadening of the situation in which subsidiary protection status must be withdrawn. When exclusion or withdrawal concerned commission of a serious crime, QD Article 19(2) contained a "may" clause, meaning it was possible but not mandatory for Member States to withdraw protection when the beneficiary had committed one or more serious crime prior to admission and they left the country of origin solely in order to avoid sanctions arising from those crimes. Under the QR, if any of the (mandatory or discretionary) exclusion grounds in Article 17 apply then withdrawal of status is mandatory; a shall clause replaces the may clause.

Again, the determining authority is responsible for the assessment on an individual basis and the guarantees set out in APR Article 66 apply.

Implementation considerations

The interplay between Articles 19 on withdrawal and Article 17 on exclusion covers the contentious question of applicants who present a danger to the community or to national security. The case law of the CJEU will be of paramount importance in the interpretation of these provisions and their application in practice. As described above, these questions have been addressed by the CJEU in the *M* and *AA* groups of cases, and in *ZZ, Kadi* and *GM*.

Chapter VII: Content of International Protection and Obligations of Beneficiaries of International Protection

The title of Chapter VII has been amended to include references to the obligations of beneficiaries, in line with the greater emphasis placed on the obligations of applicants and beneficiaries throughout the reforms.

SECTION I COMMON PROVISIONS

Article 20: General rules

Article 20(3) introduces a safeguard for beneficiaries of international protection who have yet to be issued with residence permits 15 days after the granting of status. It states that Member States "shall take provisional measures" to ensure that beneficiaries "have effective access" to the rights laid down in the Regulation, except for the right to a travel document[147] and of freedom of movement within the Union,[148] until a residence permit is issued.[149]

145 Ibid. Article 14(b); QR Article 19(1)(b).
146 Ibid. Article 14(c); QR Article 19(1)(c).
147 Ibid. Article 25.
148 Ibid. Article 27.
149 Ibid. Article 20(3).

QR Article 20(4) merges the previous QD Article 20(3) and 20(4). In line with the other instruments of the reform,[150] it drops the language of "vulnerable persons",[151] instead referring to people with "special needs".[152] QR Article 20(4) states that the competent authorities shall take into account special needs[153] and further provides a non-exhaustive list of special needs.[154] The examples of persons with special needs correspond to the previous list of vulnerable persons with the addition of:

- Single parents with an adult dependent child.
- Person with a serious illness.[155]

Article 21: Protection from refoulement

Article 21 on the principle of *non-refoulement* has been amended to remove the sections setting out the derogations from the principle on national security grounds provided for in Article 33(2) of the Refugee Convention. The QR instead includes references to these elements as exclusion grounds at Article 24(5). As discussed above, the Regulation follows the wider approach of EU law which prohibits *refoulement*, rather than the approach of the Refugee Convention, according to which people in these categories are not excluded from refugee status but can be refouled.

Article 22: Information

Article 22 now specifies the information to be provided, "as a minimum", to beneficiaries:

- Information on rights and obligations related to residence and free movement (i.e. Articles 23 to 27).
- Information on rights related to integration (i.e. Article 28, Article 29(1), Article 29(2), Article 30(3), Article 31, Article 32, Article 34, Article 35).
- Information on specific rights for unaccompanied minors (i.e. Article 33).

An annex includes a standard template for the provision of information.

The Article has been adapted to incorporate the requirement to "make explicit references to the consequences of not complying with the obligations provided for in Article 27 on movement within the Union" (Article 22(b)). As such, it reflects the punitive approach to onward movement which runs as a strand throughout the new legislation, whereby serious consequences follow if the applicant breaches provisions on the restriction of movement so long as they were informed about the obligation and consequences. Article 27, in turn, underlines that there is no right to reside in a Member State other than that providing international protection (although it is not a right, it may be allowed – see below).

Article 23: Maintaining family unity

Article 23 slightly weakens the right to family unity, first by removing the explicit reference to the state's obligation to maintain family unit at QD Article 23(1) (however this obligation can be derived other instruments of EU law and international law). Then, the rights of family members who do not individually qualify for international protection are to be accessed in two steps. First, through provision of a residence permit which shall be granted and second

150 ECRE 'Comments on the Directive of the European Parliament and of the Council Laying Down Standards for the Reception of Applicants for International Protection (Recast)' (ECRE 2016). p. 25, available here.
151 QD Article 20(3).
152 QR Article 20(4).
153 Ibid.
154 Ibid.
155 QD Article 20(3) and QR Article 20(4).

through access to the rest of the rights listed in the section as set out in Article 23(6) (with different provisions applying for unaccompanied minors under Article 33). The QD required direct access to socio-economic rights for family members without reference to first obtaining a residence permit.

At Article 23(3), (4) and (5), Member States are prohibited from issuing residence permits to three categories of family member: those who are or would be excluded from status on the basis of the exclusion criteria (as per the QD); spouses and partners where there are "strong indications that the marriage or partnership was contracted for the sole purpose of enabling the person concerned to enter or reside in the Member State concerned" (new); and where there are national security or public policy concerns (adapted).

As elsewhere in the reforms, the reference to "public order" has been replaced by the broader and less clear "public policy".

SECTION II RIGHTS AND OBLIGATIONS RELATED TO RESIDENCE AND STAY

Article 24: Residence permits

Article 24 regulating the issuing of residence permits incorporates a number of changes. First, a set of changes improve the rights of beneficiaries. The Article specifies that beneficiaries have the right to a residence permit for as long as they have status. Article 24(2) requires that the permit be issued as soon as possible and not later than 90 days after notification of the granting of status, and Article 24(3) requires that it be issued free of charge or at least for a fee not exceeding the cost to a national of an ID card. Then, under new point Article 24(5), the authorities may revoke or refuse to renew a permit only when status has been withdrawn through application of Articles 14 and 19. Withdrawal reasons related to "public order" are not part of Articles 14 and 19 and therefore no longer serve as grounds for the authorities to revoke or refuse to renew residence permits.[156]

Under Article 24(4) the validity periods remain as for the QD: the first residence permit shall have a validity period of at least three years for refugee status and one year for subsidiarity protection, and the validity periods on renewal remain three years and two years respectively as per the QD. Member States are now obliged to ensure that the renewal of residence permits is organised:

"in such a way as to ensure continuity of the period of permitted residence, with no interruption between the period covered by the lapsing of the permit and the renewed permit, provided that the beneficiary of international protection acts in accordance with relevant national law providing for the administrative formalities for renewal".

Family members are entitled to permits of the same duration as the beneficiary.

Implementation considerations

The absence of a clear-cut time limit for Member States to issue a permit led to significant delays across many Member States. Beneficiaries have mostly faced delays of one month (e.g. Bulgaria, Sweden, Hungary, Italy),[157] while some faced delays of several months (e.g. Cyprus and Malta) or up to one year (e.g. France).[158] ECRE welcomes the introduction of a

156 QR Article 14(2); QD Article 24(2).
157 ECRE 'Asylum on the clock? Duration and review of international protection status in Europe, AIDA Legal Briefing No 6' (ECRE 2016), pp. 5-6, available here.
158 Ibid.

90-day time limit. Nonetheless, the 2016 proposal's version of Article 24(2) introduced a time limit of 30 days rather than 90 days which was a more suitable time limit in terms of the applicants' rights and Member States' practice.

Article 24(4) retains an unjustifiable distinction between the two statuses, based on the false assumption that subsidiary protection is of a more temporary nature than refugee status. In the preparation of the 2009 proposal for the Qualification Directive, the Commission itself has acknowledged 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 limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified".[159]

The elimination of unjustified distinctions in the treatment of international protection beneficiaries vis-à-vis residence permits is also supported by Member State practice. At least seven Member States (i.e. Finland, Hungary, Italy, Luxembourg, Malta, The Netherlands, and Spain) have at times opted for the same duration of residence for the two statuses.[160] Others (i.e. Bulgaria, Croatia, France, and Portugal) provide for a validity of more than three years for refugees and at least three years for resident permits issued to subsidiary protection beneficiaries.[161]

In countries where the distinction between statuses affects residence rights, the authorities have often changed their policies on the type of protection granted accordingly. Most notoriously, the treatment of Syrian cases in Germany, the largest host state for Syrian nationals in the EU may be cited. In 2015, decision-making by the German Federal Office for Migration and Refugees (BAMF) showed that refugee status was granted to people fleeing Syria in 95.7% of cases and subsidiary protection in just 0.06% of cases. Following restrictions to the rights attached to subsidiary protection status, the rates changed significantly to become 65.4% refugee status and 34.3% subsidiary protection for Syrians by 2023. This shift led to sharp criticism in relation to the quality of decision-making and an increase in appeals against erroneous refusals of refugee status.[162]

ECRE underlined the need to align the duration of residence permits issued to the two statuses because there is no objective reason for assuming subsidiary protection to be of a more temporary nature than refugee status, and to do so would reduce erroneous decision-making and related appeals.[163]

ECRE notes that Article 24(4), which states that the permits shall last for "at least" a certain number of years, allows Member States to continue granting residence permits for longer than

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159 Proposal for a recast Qualification Directive, COM(2009) 551, 21 October 2009, p. 8, available here.

160 Finnish Government *Changes to international protection permits as of 2 January 2025*, 2 January 2025, available here; AIDA, Hungary: 2023 Update and Annex, July 2024, p. 118, available here; AIDA, Italy: 2023 Update and Annex, July 2024, p. 222, available here; Guichet Luxembourg, Applying for international protection, 21 March 2022, available here; AIDA, Malta: 2023 Update and Annex, September 2024, p. 157, available here; AIDA, Netherlands: 2023 Update and Annex, April 2024, p. 154, available here; AIDA, Spain: 2023 Update and Annex, May 2024, p. 157, available here.

161 AIDA, Bulgaria: 2023 Update and Annex, April 2024, p. 110, available here; AIDA, Croatia: 2023 Update and Annex, July 2024, p. 133, available here; AIDA, France: 2023 Update and Annex, May 2024, p. 157, available here; AIDA, Portugal: 2023 Update and Annex, July 2024, p. 174, available here.

162 ECRE, Comments on the Proposal for a Qualification Regulation, p. 16.

163 Ibid.

three years, thus providing beneficiaries with greatly increased security of residence and fostering effective integration. As many as 11 Member States provide refugees with residence permits longer than three years.[164] It is also positive that the Article now includes a requirement to not to leave gaps between permits when they are renewed, to ensure that beneficiaries are not left undocumented at the moment of renewal, provided they followed the necessary rules on renewal.

QD Article 24(5) allowed authorities to revoke or refuse to renew a residence permit solely when "compelling reasons" of national security (or public order) otherwise required it.[165] The 2016 proposal's version of Article 24(5) broadened the grounds for revoking or refusing to renew residence permits even further as it deleted the term "compelling".[166] In the final text, ECRE welcomes the deletion of this ground for revocation or refusal to renew residence permits inter alia because it is redundant, with QR Article 14(d) already providing for the withdrawal of international protection status, a precondition for the right to a residence permit, for security reasons.[167]

While distinctions between the rights attached to refugee status and subsidiary protection are unfortunately maintained, the provisions of Chapter VII should be read in conjunction with Recital (48) which underlines, first, that the content of protection can only differ where explicitly provided for by the Regulation, and, second, that "The Regulation nevertheless allows Member States to grant the same rights and benefits under both statuses".

Access to a residence permit proves that status is regular and may be required to access other rights (e.g. housing, social benefits, bank services, etc). Problems with the issuance or renewal of residence permits (mainly delays) have been reported in Belgium, France, Greece, Ireland, Malta, the Netherlands, and Poland, sometimes with severe consequences for the livelihoods of beneficiaries of international protection, including lack of access to basic services or homelessness.[168] In that regard, it should be recalled that, regardless of the time limits imposed under Article 24(2), Article 20(3) introduces a safeguard by allowing provisional measures to be taken for beneficiaries who have not been issued residence permits within 15 days of the granting of their status.[169] Making use of this safeguard, and ensuring the temporary document issued fully substitutes for the residence permit until its delivery, will be crucial. To avoid the additional administrative burden of issuing a temporary documents Member States can ensure that residence permits are issued within the 15-day timeframe.

In terms of the nature of the temporary document, it is important that it is recognised by all relevant authorities and agencies at the national level to ensure that it serves the purpose of allowing beneficiaries access to the labour market, social security and so on, on a par with those who have received a residence permit. There are examples from Member States where

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164 ECRE, Belgium: 2023 Update and Annex, May 2024, p. 172, available here; AIDA, Bulgaria: 2023 Update and Annex, April 2024, p. 110, available here; AIDA, Croatia: 2023 Update and Annex, July 2024, p. 133, available here; AIDA, France: 2023 Update and Annex, May 2024, p. 157, available here; Finnish Government, *Changes to international protection permits as of 2 January 2025*, 2 January 2025, available here; Italy: 2023 Update and Annex, July 2024, p. 222, available here; Guichet Luxembourg, Applying for international protection, 21 March 2022, available here; AIDA, Netherlands: 2023 Update and Annex, April 2024, p. 154, available here; AIDA, Portugal: 2023 Update and Annex, July 2024, p. 174, available here; AIDA, Slovenia: 2023 Update and Annex, June 2024, p. 109, available here; AIDA, Spain: 2023 Update and Annex, May 2024, p. 157, available here; AIDA, Sweden: 2023 Update and Annex, April 2024, p. 114, available here.

165 QD Article 24(2).

166 QR Proposal Article 26(2)(c).

167 QR Article 14(d).

168 ECRE 'Asylum in Europe: the situation of applicants for international protection in 2023', November 2024, p.11, available here.

169 QR Article 20(3).

the temporary documents are issued but are not recognised by any of the relevant authorities, which renders them next to useless.[170] At very least, the temporary document should include text which specifies that it has the same value as the residence permit.

ECRE warns against erroneous decision-making based on nationality to take advantage of the lower standards of rights for subsidiary protection holders under Article 24(4). As the latter allows Member States to continue granting residence permits for longer periods of time, ECRE argues that they should do so to ensure remove discrepancies between the statuses.

Recommendations

- Member States should issue residence permits as soon as possible, aiming for 30 days rather than 90 days.
- Member States should ensure that all relevant authorities are familiar with the types of residence permits provided and the rights attached.
- Member States should issue residence permits for the same duration for refugee and subsidiary protection holders, including in order to minimise pressure to erroneously provide lower forms of status.
- Member states should issue residence permits for five years rather than three years in order to support labour market integration and minimise administrative costs.

Article 25: Travel documents

Under Article 25(1) and (2), amendments require that travel documents issued to beneficiaries of both statuses be valid for at least one year. A new point at Article 25(3) seeks to ensure consistency with the Schengen rules on document types.

- For refugees, travel documents must be prepared "in the form set out in the Schedule to the Geneva Convention and which comply with the minimum standards for security features and biometrics outlined in the Council Regulation (EC) No 2252/2004 on standards relating to travel documents".
- For a beneficiary of subsidiary protection, travel documents must "comply with the minimum standards for security features and biometrics outlined in the Council Regulation (EC) No 2252/2004 on standards relating to travel documents".

Article 25(3) introduces an explicit requirement for Member States which do not take part in the Schengen *acquis* also to issue travel documents for beneficiaries of international protection. Article 25 provides for derogations on grounds of national security or "public policy" (instead of "public order", as was the case in the QD).

Implementation considerations

Similar to the previous observations relating to residence permits, the short duration of travel documents under Articles 25(1) and (2) is liable to lead to administrative burden and deny beneficiaries opportunities to travel, which contradicts the Refugee Convention. The duration of the travel document is also less than the minimum duration of the residence permit for refugees. Several Member States have opted for far more favourable standards in terms of duration of travel documents (e.g. refugees are entitled to travel documents of five years in Austria, Bulgaria, Croatia, France, Germany, Greece, Italy, Portugal and ten years in Ireland and Slovenia), which in ECRE's view should continue to be provided.[171]

[170] AIDA Greece, pp. 245-246.

[171] AIDA, Austria: 2023 Update and Annex, June 2024, p. 163, available here; AIDA, Bulgaria: 2023 Update and Annex, April 2024, p. 117, available here; AIDA, Croatia: 2023 Update and Annex, July 2024, p. 144,

Recommendations

- Member States should issue travel documents valid for at least five years in order to minimise administrative costs and to fully align with the Refugee Convention.

Article 26: Freedom of movement within the Member State; Article 27 Movement within the Union

Articles 26 and 27 cover freedom of movement within the Member State and within the EU as a whole. In terms of the former, Article 26 strengthens the rights of the applicant by stipulating that they enjoy freedom of movement including the right to choose their place of residence, under the same conditions as other legally resident non-citizens "who are generally in the same circumstances".

In contrast, Article 27 specifies that beneficiaries do not have the right to reside in any Member State other than the one granting international protection. Nonetheless, although it is not a right, they may be allowed to reside in another Member State based on national law or other provisions of EU or international law, as they have the right to apply and be admitted to reside in another Member State. Recital (65) confirms that this would not imply any transfer of status or rights. While denied the right to reside in other Member States, beneficiaries may enter into and travel freely within the Schengen area as per the Schengen *acquis*.

The 2016 proposal contained a provision at Article 29(2) (Article 27 in the final text), which stated that a beneficiary found in a Member State other than the one providing protection would be subject to a take-back procedure under the Dublin Regulation, with a reference to the relevant article under the since withdrawn Dublin IV proposal. While the point has been deleted from the QR, in a major change, it appears in the AMMR, which expands the scope of the take-back procedure to include beneficiaries of international protection in addition to applicants.[172]

Implementation considerations

Article 26 brings about a welcome clarification of the scope of the right to free movement within the territory of the Member State which has granted protection. In line with the CJEU's ruling in *Alo and Osso*[173] interpreting the scope of QD Article 33, the QR now clarifies that the right to free movement within the territory also encompasses the beneficiary's "right to choose their place of residence in that territory". The Article also incorporates Article 26 of the Refugee Convention by referring to the applicability of conditions and restrictions such as those provided for other third-country nationals legally resident "who are in a comparable situation".

Following from the CJEU's reasoning in *Alo and Osso*,[174] the provision precludes the imposition on subsidiary protection beneficiaries of residence conditions that are not imposed on refugees. ECRE welcomes the alignment of free movement rights for refugees and subsidiary protection beneficiaries.

available here; AIDA, France: 2023 Update and Annex, May 2024, p. 165, available here; AIDA, Germany: 2023 Update and Annex, June 2024, p. 228, available here; AIDA, Italy: 2023 Update and Annex, July 2024, p. 237, available here; AIDA, Portugal: 2023 Update and Annex, July 2024, p. 188, available here; AIDA, Ireland: 2023 Update and Annex, June 2024, p. 152, available here; AIDA, Slovenia: 2023 Update and Annex, June 2024, p. 116, available here.

172 Regulation on Asylum and Migration Management, Article 36(1)(b).

173 Joined Cases C-443/14 and C-444/14 *Alo and Osso* [2016] ECLI:EU:C:2016:127, paras 28-37.

174 CJEU, *Alo and Osso*, paras 54-56.

Nonetheless, ECRE reiterates its longstanding position that beneficiaries of international protection should be granted freedom of movement across the EU, in keeping with the Article 78(2)(a) TFEU objective of a "uniform asylum status, valid throughout the Union". Short of mutual recognition, a right to reside would have been a step towards the objective. Along with the rest of the Pact, the QR demonstrates the tendency towards regrettable backtracking from earlier political commitments towards mutual recognition of positive asylum decisions which would have opened up freedom of movement.[175]

Maintaining the possibility for the beneficiary to apply to be allowed to reside in another Member State is an inadequate compromise, first, since it does not allow for the transfer of status and associated rights, and, second, because in practice this approach creates significant administrative burden for employers, national authorities and applicants alike. One of the most likely reasons for residing in another Member State is to take up a job opportunity. Without either the right to reside elsewhere or mutual recognition of asylum decisions, then the employer and applicant are obliged to apply for a Single Permit or national-level alternative, which tends to be an uncertain and onerous process. Thus, the failure to progress on mutual recognition or other ways to improve freedom of movement, creates an obstacle to meeting the labour market needs of the EU and to supporting the integration of beneficiaries.

Under the LTRD and the Blue Card Directive,[176] both refugees and subsidiary protection beneficiaries can apply for the permits. However, should a beneficiary apply for and obtain a residence permit, an immediate concern will be which state is responsible for their status, and at what stage does the Member State which has issued the permit become responsible. There is a Council of Europe instrument that governs the transfer of protection status, the Agreement on Transfer of Responsibility for Refugees, but it is only ratified by 13 European counties and 11 Member States.[177] Even if it were ratified by all Member States, it does not cover the transfer of the beneficiaries of subsidiary protection. National laws governing the transfer of international protection are equally limited.[178] In addition, some Member States dispute the content of protection, the rights, that they should provide following a transfer of residence, which is disconcerting for the beneficiary of protection who obtains a resident permit and moves to a second Member State.

A fundamental question arises when a beneficiary moves to another Member State and intends to settle there for a significant period of time but where there is no international or national scheme governing the transfer of protection to the second Member State. Does the first Member State still have an obligation to continue to provide protection to a person who is

175 European Commission 'Policy Plan on Asylum COM(2008) 360, 17 June 2008, 6; European Council, Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens' OJ 2010 C 115/1, para 6.2.1; Council of the European Union '18-month programme of the Council (1 January 2013 – 30 June 2014)', 17426/12 POLGEN 213, 7 December 2012, p. 111. For a detailed analysis see ECRE 'Mutual Recognition of positive asylum decisions and the transfer of international protection status within the EU' Discussion Paper, (ECRE 2014).

176 *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment* COM(2016) 378, 7 June 2016.

177 Council of Europe Agreement on Transfer of Responsibility for Refugees (1980), available here. These countries include: Denmark, Finland, Germany, Italy, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom, Switzerland and Norway. The UK withdrew from the agreement in 2013, see UK Home Office, *Transfer of refugee status – interim notice*.

178 France, Austria, Switzerland, Belgium and the Netherlands have all concluded additional agreements on the transfer of refugee status. For more information see ECRE 'Unravelling Travelling, Travel documents for beneficiaries of international protection' AIDA Legal Briefing No 8, October 2016, available here.

not living within their jurisdiction and does not intend to be for the foreseeable future because they now have a residence permit for another Member State?

Recommendations

- The Commission should not abandon steps towards allowing freedom of movement for beneficiaries of international protection within the EU. This could be through mutual recognition of asylum decisions, transfer of protection statuses, or the use of rights to remain. The absence of progress in this area is a major cause of onward movement and of irregular presence and related challenges.

Section III Rights related to integration

Article 28: Access to employment

The provisions in Article 28 state clearly that beneficiaries of refugee status and subsidiary protection have the right *to* work and then considerably expand the rights *in* work of this group compared to the QD. As per Article 28(2), beneficiaries shall enjoy equal treatment with nationals as regards:

> "(a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, and health and safety requirements at the workplace;
>
> (b) freedom of association and affiliation, and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations;
>
> (c) employment-related educational opportunities for adults, vocational training, including training courses for upgrading skills and practical workplace experience;
>
> (d) information and counselling services offered by employment offices."

The provisions under Article 28(2)(a) and (b) are new and aim to reduce the risk of labour market exploitation.

Nonetheless, Recital (69) allows for restrictions in regard to access to posts which involve the exercise of public authority or the state's interest, and for certain exclusions from management positions.

Article 29: Access to education

Under Article 29, the right to education of beneficiaries is enhanced. First, for children, the general requirement of equal treatment with nationals is reiterated, reflecting the provisions of the Convention on the Rights of the Child. However, at point 2, Article 29(1) stipulates that the equal treatment should persist until the completion of secondary education, even when the person reaches the age of majority. This provision reflects the relevant case law of the CJEU.

In a new provision, Article 29(2) guarantees equal treatment as regards access to education for adults, however the authorities may refuse grants and loans if national law so allows.

Article 31: Social security and social assistance

Article 31(1) states clearly that equal treatment with nationals should be provided as regards social security and social assistance[179], reflecting Article 23 of the Refugee Convention.[180] It then adds a qualification such that access to certain forms of social assistance can be "made conditional on the effective participation of the beneficiary of international protection in integration measures, where participation in such measures is compulsory".[181] This applies provided that such integration measures are accessible and free of charge.

Article 31(2) maintains the restriction in the QD that allows Member States to limit assistance provided to beneficiaries of subsidiary protection to "core benefits", however this is now "where that possibility is provided for under national law". Point 2 also stipulates that core benefits should include at a minimum: "at least" minimum income support,[182] assistance for health reasons,[183] parental assistance,[184] and housing benefits[185] when that possibility is provided for under national law.[186]

The 2016 proposal attempted to make the granting of benefits with regard to access to employment and social security conditional on the prior issuing of a residence permit, which could have potentially placed some beneficiaries of international protection in a situation of destitution contrary to the Charter. ECRE therefore commends the deletion of the link between access to social security and the issuance of a residence permit. The Regulation instead links social security to the Charter under Recital (11).

Implementation considerations

As per the comments above on residence permits, ECRE opposes discrimination between refugees and subsidiary protection beneficiaries as regards the content of protection. Beneficiaries of subsidiary protection should not be assumed to have more temporary protection needs than refugees and should thus be entitled to equal social assistance. As stated above, ECRE recalls that harmonising the rules between the two statuses will also have a beneficial impact on Member States' administrative resources, as they reduce incentives for litigation by persons whose status is deemed incorrectly determined. This was the main driver of the one-status system previously applied in the Netherlands.

Article 31(1) makes the obligation of Member States to ensure equal treatment between refugees and nationals of the Member State that granted international protection more explicit than the previous QD Article 29. The provision should be implemented in line with the judgment in *Ayubi* where the CJEU found that the social welfare and social assistance policy of Member States cannot discriminate between refugees with temporary residence permits and refugees with permanent residence permits.[187]

However, the second subparagraph of the provision introduces the possibility for Member States to condition certain social assistance on effective participation in integration measures.

179 QR Article 31(1).
180 Refugee Convention, Article 23.
181 QR Article 31(1).
182 Ibid. Article 31(2)(a).
183 Ibid. Article 31(2)(b).
184 Ibid. Article 31(2)(c).
185 Ibid. Article 31(2)(d).
186 Ibid. Article 31(2).
187 Case C-713/17 *Ayubi* [2018] ECLI:EU:C:2018:929.

ECRE raised concerns that this provision could lead to abusive practice and drive Member States to focus on coercive integration conditions, rather than investing in more cooperative integration measures.[188] The notion of "effective participation" in integration measure also remains unclear: it could be read either as an obligation on applicants to participate or as an obligation to succeed in integration measures (e.g. passing civic integration examinations or language tests).[189] The latter point is discussed in the section on Article 35 on integration measures, below.

No justification is provided for the difference in treatment between categories of beneficiaries of international protection under Article 31(2), although it might be related to the different length of residence afforded to the two categories.[190] Recital (51) of the 2016 proposal stated that "as regards beneficiaries of subsidiary protection, Member States should be given some flexibility"[191] but is absent from the final text.

Recommendations

- Member States should take a pragmatic approach to integration ensuring adequate support is in place to allow for inclusion into society of beneficiaries of international protection present in the countries.
- Member States should avoid discrimination based on the type of protection status a person holds; there is no evidence that subsidiary protection is of a more temporary nature (even if it was intended as such).
- Member States need to implement QR obligations on integration in combination with related legal obligations on trafficking and exploiting, as absence of respect for the rights forming the content of protection under the QR is likely to increase risks of exploitation.

Article 33: Unaccompanied minors

The provisions on unaccompanied children strengthen the rights of this particularly vulnerable group, as is the case throughout the new asylum legislation.

Article 33(1) maintains the provision that the authorities shall appoint a guardian for an unaccompanied minor "as soon as possible" after international protection is granted to them. The guardian, as per Article 3, is a natural person or an organisation designated to assist, represent and act on behalf of an unaccompanied child to ensure the respect for their rights and obligations under the QR and safeguard their best interests and general well-being.[192]

Article 33(1) clarifies that:

- Authorities can keep the same person designated as "representative" under APR Article 23(b) or RCD 27(1)(b) to act as a guardian, without the need for formal appointment. That means someone who "should assist and guide the minor through the procedure with a view to safeguarding the best interests of the child and should, in particular, assist with the lodging of the application and the personal interview".
- The representative "shall remain responsible for unaccompanied minors until a guardian is appointed".
- Organisations or natural persons whose interests conflict or could conflict with those of an unaccompanied minor shall not be eligible for appointment as their guardian.

188 ECRE Comments on the Proposal for a Qualification Regulation, pp. 19-20.
189 Ibid.
190 Ibid.
191 Qualification Regulation Proposal, p.25.
192 QR Article 3(18).

- Where an organisation is appointed as guardian, it shall "as soon as possible", designate a natural person to fulfil the duties of guardian.

Article 33(2)(a1) adds a reference to the best interests of the child, stating that the guardian's duties must be carried out "with a view to safeguarding the best interests of the child and the unaccompanied minor's general well-being". The duties remain the same as those listed under the QD, save for one addition under Article 33(b1), stating that guardians shall assist and represent the unaccompanied child if their protection status is withdrawn.[193] Article 33(2)(a2) to (c2) adds two requirements for guardians:

- Ensuring confidentiality of information obtained in the course of their work.[194]
- Having a clean, verified record regarding child-related crimes and offences or of crimes and offences leading to serious doubts about whether said person is able to care for children.[195]

Article 33(3) introduces a requirement that authorities "shall appoint each guardian to represent a proportionate and sufficiently limited number of unaccompanied minors in order to ensure that guardians are able to perform their tasks effectively [...]".[196]

Article 33(4) introduces additional safeguards regarding the entities responsible for supervising and monitoring of guardians:

- The entity should review the performance of guardians and examine complaints against them "without delay".
- Authorities should replace inadequate guardians.
- Authorities should explain to unaccompanied minors how to lodge a complaint against their guardians.[197]

Implementation considerations

Article 33(1) of the proposal introduced an explicit time limit of "five working days at the latest" for the appointment of the guardian. Although this was not included in the final text, it gives a sense of the time limit envisaged in the proposal. Given the category of beneficiaries involved, ECRE suggests that the "as soon as possible" requirement should be strictly interpreted.

In general, Article 33, like its equivalents in the other legislative instruments, is extensive and includes useful new details on the guarantees for unaccompanied children.

Recommendations

- Member States should ensure a cadre of specialist staff in asylum systems, trained in child protection.

Article 34: Access to accommodation

On the sensitive question of access to accommodation, the QR slightly restricts the rights of beneficiaries. First, in Article 32(1), the treatment equivalent to other non-citizens is limited to those "who are generally in the same circumstances". Second, at Article 32(2), dispersal systems should ensure equal treatment "unless different treatment is objectively justified".

193 QR Article 33(2)(b1); See also QR Articles 14 and 19: Withdrawal.
194 QR Article 33(2)(b2).
195 Ibid. Article 33(2)(c2).
196 Ibid. Article 33(3).
197 Ibid. Article 33(4).

Recommendations

- Member States should recall the obligations of the CFREU and relevant case law in the provision of accommodation.

Article 35: Access to integration measures

Compared to the equivalent QD Article 34, the QR expands the rights and obligations of the beneficiaries as regards integration measures. It also strengthens support for integration, a theme found throughout the first group of Pact legislative instruments on which agreement was reached in 2018, including the QR and the RCD recast.

Article 35(1) repeats the obligation on Member States to grant access to integration measures; it adds a reference to language courses, civic orientation, integration programmes and vocational training.

Article 35(2), in contrast, creates a new obligation on beneficiaries to participate in integration measures when participation is compulsory. After concern about the measure, amendments were introduced which only allow mandatory integration measures where they are accessible and free of charge (unless the beneficiary has sufficient means). Article 35(4) prohibits sanctions when failure to participate is due to circumstances beyond the person's control. Also following amendments, the integration measures should take into account the specific needs of the person and be considered appropriate by the authorities, a provision which also reflects the jurisprudence of the CJEU.[198]

Implementation considerations

The obligation to participate in integration measures is presented as a corollary to the Member States' duty to provide access to integration in Article 38(1).[199] While ECRE does not oppose compulsory integration measures *per se*, conditioning certain benefits on participation in integration measures could create challenges. The corresponding right for Member States to deprive people of social assistance under Article 34(1) is left to their discretion and could lead to abusive practice, driving Member States to focus on coercive integration conditions rather than investing in cooperative integration measures, in accordance with the precepts of the Action Plan on Integration. At the same time, the notion of "effective participation" in integration measures is not sufficiently clear: the term could be read either as a performance obligation on the beneficiary to participate or an outcome obligation requiring them to succeed in integration measures e.g. by passing civic integration examinations or language tests.

Overall, where Member States choose to introduce mandatory integration measures, these should not be burdensome and costly for the person, nor should they exceed what is necessary to actually promote integration. As with other parts of the Pact, there is a risk that obligations are introduced as a means to apply restrictive practices, for example, by putting place obligations that are difficult to achieve and then activating restrictive and punitive measures as a punishment for not meeting the (unrealistic) obligation. In the area of integration, the CJEU judgment in *Keren* (C-158/23) should guide implementation.[200]

198 Case C-579/13 *P and S* [2015] ECLI:EU:C:2015:369, para 49.
199 QR Explanatory Memorandum, p. 17.
200 Case C-158/23 *Keren* [2025] ECLI:EU:C:2025:52.

Recommendations

- Member States should avoid mandatory integration measures unless there is a clear and demonstrable value to the state.
- Member States should invest more in integration but favour cooperative rather than coercive approaches.

Chapter IX Final Provisions

Article 40: Amendment to Directive 2003/109/EC

Article 40 amends the Directive concerning the status of third-country nationals who are long term residents, known as the Long-Term Residence Directive (LTRD).

First, LTRD Article 4(2) on duration of residence is amended to extend the period that counts towards the five years required for acquisition of the long-term resident status. For those who receive international protection, the period between the lodging of the application and the provision of the residence permit under Article 24 will now count towards the five years.

Second, Article 40(2) introduces a paragraph into LTRD Article 4 which stipulates that if a beneficiary is found in a Member State other than the one granting international protection without the right to stay or reside there, then the period of legal stay in the Member State granting protection before the onward movement must not be included in the calculation of the five years under the LTRD. In practice, this means that the calculation of the residence period of 5 years would restart every time the person is found to be unlawfully present in another Member State. The provision is qualified in the following paragraph which states that the Member State may still include this period, "in particular where the beneficiary of international protection demonstrates that the reason for the stay or residence without a right was due to circumstances beyond that beneficiary's control".

Implementation considerations

While the first amendment introduces a small welcome change, the second represents a continuation of the punitive approach to onward movement which runs throughout the reforms and restricts the possibility for refugees and subsidiary protection beneficiaries to lawfully move within the EU. Rather than confronting the reasons why people move onwards after being granted status in one Member State, the QR restricts irregular movements by "providing for additional disincentives".[201]

ECRE raised concerns that the measure adds to the sanctions against beneficiaries of international protection for onward movement, whereas other categories of third-country nationals are not subject to sanctions for irregular movement within the Union. In accordance with the 1951 Refugee Convention, refugees should in fact receive the most favourable treatment afforded to non-nationals for a number of rights, such as association and employment.[202] In keeping with this approach, ECRE has recommended a set of reforms to the LTRD to expand access to this status.[203]

ECRE also recommends an incentive-based approach to support compliance with the rules on responsibility and the mutual recognition of asylum decisions. A number of these options were on the agenda of the Commission at the start of the reform process:

201 QR Explanatory Memorandum, p5.
202 Refugee Convention, Articles 15 and 17(1).
203 ECRE 'The Potential of the Long-Term Residence Directive', October 2023, available here.

> "In addition, further initiatives could be taken in the longer term to develop the mutual recognition of the protection granted in the different Member States which could be the basis for a framework for transfers of protection."[204]

The approach of the Pact and subsequent reforms on mutual recognition of return decisions is inherently inconsistent, since it is based on mutual recognition in relation to negative decisions but not in relation to positive decisions. If the trust purportedly exists between Member States such that they are required to enforce the negative decisions of other Member States, then it should extend to the mutual recognition of positive decisions, given that the implications of enforcing a negative decision are potentially of far greater consequence.

Recommendations

- Member States should make use of the provisions allowing them to count the time spent in another Member State towards qualification for LTRD status.
- Member States should take an open approach to expansion of the use of the LTRD to help address irregularity and exploitation, and to respond to labour market needs.
- The Commission should work on political arrangements to unblock the broader reform of the LTRD, currently on hold due to differences between the positions of the co-legislators.
- Options for mutual recognition of asylum decisions should remain part of the political debate and research field.

[204] European Commission 'Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe' COM(2016) 197, 6 April 2016, p. 11.