

# The Common European Asylum System: Phase Three

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# Background

- Phase I and II legislation: Dublin Reg, Eurodac, Qualification Directive, Reception Conditions Directive, Procedures Directive
- Phase I: 2003-2005
- Phase II: 2011-2013: last deadline July 2015
- European Asylum Support Office – set up 2010

# 2016 proposals

- May 2016: Dublin IV, Eurodac, EU Asylum Agency proposals
- July 2016: qualification, procedures, reception condition, resettlement proposals
- Dec 2016: Council agreed position on Eurodac and asylum agency
- EP: draft reports on agency, Eurodac, reception conditions

# Reception conditions

- Remains a directive
- Higher standards still allowed, if compatible
- Wider definition 'material reception conditions' – includes sanitary products
- Information about benefits when application lodged – not up to 15-day wait
- Use a standard form for information

# Reception conditions

- Travel documents only issued in emergency
- Obligation to **limit residence** – now including risk of absconding (in particular Dublin cases), swift processing
- Benefits linked to this obligation
- Obligation to report if risk of absconding
- Link to **new detention ground**: if non-compliance with residence condition & risk of absconding

# Reception conditions

- **Employment**: waiting period cut from 9 months to 6; but not if procedure accelerated
- Slightly narrower labour market preference
- New: equal treatment re working conditions etc
- **Benefits**: proportionality if refund or contribution etc required – Danish case
- All types of housing must be ‘adequate standard of living’, not just accom centres

# Reception conditions

- Must prevent sexual assault all types of housing, not just some
- **Dublin cases** – no benefits except ‘dignified standard of living’, ‘educational activities’, health care
- NB violates Charter – *CIMADE and GISTI* (ECJ)
- **Reduction/withdrawal of benefits**: can punish by giving in-kind only; many more grounds
- New clause on contingency planning

# Qualification

- Directive turned into regulation
- Full harmonisation – although national humanitarian status allowed if no confusion
- Most options removed
- Art 5.3: exception to ‘sur place’ applications re self-created situations in host State now mandatory, applies to SP also
- Art 6: list of persecutors is exhaustive



# Qualification

- Art 7.3 – actors of protection – must also consider EU agency country of origin information and common analysis
- Art 8 – internal protection alternative – becomes mandatory
- New 8.2 – procedural rules
- Use EU agency country of origin info
- New 8.4 – consider individual circumstances

# Qualification

- Art 10 - Convention grounds: implicitly MS must insist on both parts of 'particular social group' test being met ('innate characteristic' and 'distinct identity')
- Can't demand 'discreetness' – nb ECJ case law
- Art 11 – cessation – EU agency & UNCHR info
- Art 12 – exclusion – new paras reflect case law
- Art 14 – mandatory revocation if GC exceptions to non-refoulement apply

# Qualification

- Art 14.5 – 3 month delay revocation in cases of cessation – normal migration law may apply
- Art 15 – new – must review status if situation changes, when first renewing permit
- **Subsid protection**: one optional exclusion clause becomes mandatory
- Changes matching refugee clauses – except checks on first two renewals

# Qualification

- **Content** – Art 22.3: need residence permit to get employment or social security – overturns ECJ case law [ditto family members, Art 25]
- Art 24 – standard form re benefits of status
- Art 26 – residence permits: 30 day deadline to issue; standard format used; renewable for standard 3 year period; family members match; SP permits shorter period; link to revocation and refoulement

# Qualification

- Art 27 – travel documents – standard format and validity period of 1 year minimum
- Arts 28 & 34 – revised clause on movement and benefits – reflect ECJ case law
- Art 29 – no movement between MS – without prejudice other EU law and Schengen rules – nb status ‘valid throughout the Union’?
- Art 32 – equal treatment prior learning & experience
- Integration may be compulsory; repatriation assistance compulsory if beneficiary consents

# Procedures

- Replacement by regulation
- most options removed
- ‘More favourable provisions’ option removed
- **Streamlined process**: time limit to lodge applications; time limits for accelerated or inadmissible cases; time limits on appeals
- **Rights and obligations**: more obligations for asylum-seekers; possible uniform format for document

# Procedures

- **Guarantees**: stronger right to legal aid, recording of interviews
- **Admissibility**: Becomes mandatory for ‘first country of asylum’, ‘safe third country’
- Rules widened, harmonised (ie new definition of ‘sufficient protection’, the 2nd FCA option)
- STC: less explicit re Convention refugee, more explicit re connection with state
- common EU STC list, 5 years national lists
- Some new safeguards

# Procedures

- Links to Dublin IV proposal 'bottleneck' clause
- MS must first, before any Dublin criteria apply (even family criteria), examine inadmissibility on 'safe third country' or 'first country of asylum' grounds
- Also: MS must at same point fast-track if applicant's country of origin is 'safe' on standard EU list (as proposed in 2015)
- That MS is responsible for the application



# Procedures

- **Accelerated cases**: Now mandatory (not just optional) for 'safe country of origin' cases (Art 40)
- Not clear if list of accelerated cases is exhaustive (ditto current Directive)
- Two-month time limit to decide
- Authorities may switch to normal procedure if too complex
- Can apply to unaccompanied minors re SCO cases

# Procedures

- **Safe country of origin**: still optional
- Common EU list – 5 years to phase out national lists
- NB 2015 proposal on Western Balkans and Turkey

# Contacts

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