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Reception of asylum-seekers – recast directive

States must treat asylum-seekers and refugees according to the appropriate standards laid down in human rights and refugee law. The current migration crisis revealed wide divergences in the level of reception conditions provided by Member States. While some are facing problems in ensuring adequate and dignified treatment of applicants, in others the standards of reception provided are more generous. This has led to secondary movements of asylum-seekers and refugees, and has put pressure on certain Member States.

The aim of the proposed recast directive, which would replace the current Reception Conditions Directive, is to ensure greater harmonisation of reception standards and more equal treatment of asylum-seekers across all Member States, as well as to avoid 'asylum shopping' whereby asylum-seekers choose the Member State with the highest protection standards for their application. Although the co-legislators reached provisional agreement on the proposal in trilogue, Coreper was not able to confirm the Council's support for that text and trilogue negotiations have yet to restart.

Proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)

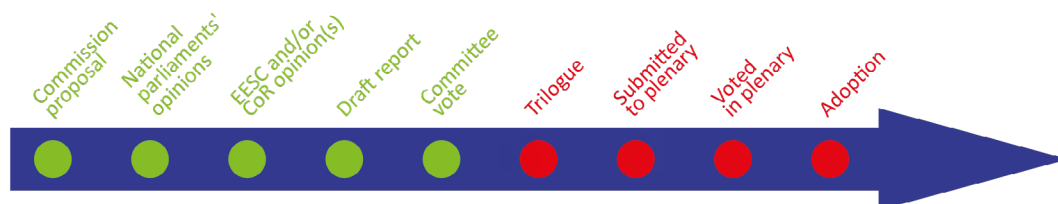
COM(2016)0465 of 13.7.2016, 2016/0222(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

Committee responsible: Civil Liberties, Justice and Home Affairs (LIBE)

Rapporteur: Sophia in 't Veld (ALDE, the Netherlands)

Shadow rapporteurs: Salvatore Domenico Pogliese (EPP, Italy)
Kati Piri (S&D, the Netherlands)
Jussi Halla-Aho (ECR, Finland)
Cornelia Ernst (GUE/NGL, Germany)
Bodil Valero (Greens/EFA, Sweden)
Gilles Lebreton (ENF, France)

Next steps expected: Relaunch of trilogue negotiations



29 March 2019
Fourth edition
The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.



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Introduction

Since the adoption of the [European Agenda on Migration](#) in May 2015, the European Commission has been implementing measures to complete the Common European Asylum System ([CEAS](#)). The system provides common minimum standards for the treatment of asylum-seekers and is based on rules determining the Member State responsible for examining an application for international protection ([Dublin Regulation](#)), common standards for asylum procedures ([Asylum Procedures Directive](#)), recognition and protection of beneficiaries of international protection ([Qualification Directive](#)) and reception conditions ([Reception Conditions Directive](#)).

In April 2016, the European Commission presented a [communication](#) on the CEAS, which identified some weaknesses, notably the different treatment of asylum-seekers across Member States. In order to address those differences and improve the functioning of the CEAS, the Commission adopted [first](#) and [second](#) packages of legislative proposals, including a revision of the Reception Conditions Directive. Its aim is, among others, to further harmonise reception conditions in the EU and thereby ensure more equal treatment of asylum-seekers, prevent asylum-seekers from moving between Member States, and avoid 'asylum shopping' whereby asylum-seekers choose the Member State with the highest protection standards for their application.

Context

According to the [recommendations on reception standards For asylum-seekers in the European Union](#), developed by the United Nations Refugee Agency (UNHCR), reception conditions refer to the treatment of asylum-seekers by a country from the moment they apply for asylum, and include access to information at the border, humane conditions in refugee centres, legal counselling, education, medical care, employment, timely asylum procedures, and freedom of movement. States can choose what forms and kinds of support they will offer to asylum-seekers. These may range from 'in kind' support, such as accommodation, food and health care, to financial payment or work permits to allow self-sufficiency. However, despite states' wide discretionary powers, asylum-seekers' human dignity and rights must be protected and their situation must, in all circumstances, be 'adequate for the country in which they have sought asylum'.

International and regional legal instruments oblige states to treat asylum-seekers and refugees in accordance with relevant human rights and refugee law standards. Article 25 of the Universal Declaration of Human Rights ([UDHR](#)) recognises everyone's right to a standard of living adequate for the health and well-being of themselves and of their family, including food, clothing, housing and medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The International Covenant on Civil and Political Rights (ICCPR) provides standards for the exercise of civil rights, including protection against arbitrary detention and torture, and the right to recognition everywhere as a person before the law.¹

¹ International Federation of Red Cross and Red Crescent Societies, 'Guidelines on the reception of asylum-seekers for National Red Cross and Red Crescent Societies', 2001, pp.8-9.

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The Charter of Fundamental Rights of the European Union is one of the tools at EU level that protects asylum seekers' human rights. Reception conditions should, among other things, be consistent with provisions relating to the prohibition of torture, inhuman or degrading treatment, the right to liberty and security, the right to privacy and family life, and the right to an effective remedy. In addition, the European Social Charter guarantees a broad range of human rights with respect to everyday essential needs related to employment and working conditions, housing, education, health, medical assistance and social protection.

Existing situation

Directive 2013/33/EU laying down standards for the reception of applicants for international protection

The current EU legislation that applies in the field is Directive 2013/33/EU. This directive, adopted on 26 June 2013 and applicable since 21 July 2015, is a recast of a previous Council Directive 2003/9/EC and aims at providing dignified and more harmonised standards of living of applicants for international protection in the EU. However, it allows Member States to introduce more favourable provisions as long as they are compatible with the Directive (Article 4).

The Directive applies to all third-country nationals and stateless persons who apply for international protection anywhere in the Member States, including at the border, in territorial waters or in transit zones (Article 3(1)). It applies during all stages and types of procedures concerning applications for international protection (Recital 8), including to asylum-seekers pending transfer under the Dublin Regulation.

The Directive ensures that applicants have access to material reception conditions, which include housing, food, clothing and a daily allowance (Article 2(g)), as well as access to health care, employment and medical and psychological care. It also provides grounds for Member States to reduce or, in exceptional and duly justified cases, withdraw those material reception conditions (Article 20).

The Directive also foresees clear rules and grounds for detention of applicants, according to which detention should be in line with fundamental rights, based on an individual assessment and only possible if other, less coercive alternative measures cannot be effectively applied (Article 8). It also restricts the detention of vulnerable persons, in particular minors (Article 11), and includes guarantees such as access to free legal assistance and information in writing when lodging an appeal against a detention order (Article 9). It also introduces specific reception conditions for detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10), and an obligation for Member States to take appropriate measures to prevent gender-based violence when providing accommodation (Article 18(4)).

The Directive includes an obligation for Member States to conduct an individual assessment to identify the special reception needs of [vulnerable persons](#) (Article 22). Member States shall pay particular attention to [unaccompanied minors](#) (Article 24) and victims of torture (Article 25) and ensure that vulnerable asylum-seekers can access psychological support. It also provides rules on the qualifications of the representatives of unaccompanied minors (Article 24).

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To enhance self-sufficiency and integration, applicants for international protection have a right to access the labour market, at the latest nine months after lodging their application (Article 15(1)). Member States can, however, restrict access for reasons of labour market policy and give priority to Union citizens and EEA nationals, as well as legally resident third-country nationals (Article 15(2)).

The Directive does not apply to the Schengen associated states, or the United Kingdom (UK), Ireland and Denmark, although the UK continues to apply the 2003 Reception Conditions Directive.

Infringement procedures

Member States had to transpose the directive and communicate their transposition measures by 20 July 2015. On 23 September 2015, the European Commission sent [letters of formal notice](#) to 19 Member States for neglecting to communicate the national measures taken to fully transpose the Reception Conditions Directive. On 10 February 2016, the Commission issued [reasoned opinions](#) against some Member States for failing to notify the Commission of their transposition measures, following the letters of formal notice sent in September 2015. Some of these procedures are still [ongoing](#). In May 2017, the Commission sent another [letter of formal notice](#) which concerns violation of the EU law on reception conditions, and in July 2018 referred [Hungary](#) to the Court of Justice of the European Union (CJEU) for breach of, among other things, the Reception Conditions Directive.

Situation in the Member States

While the current Directive provides for some degree of convergence between Member States' standards as regards reception conditions for asylum-seekers, much divergence remains, resulting to some extent from the discretion current asylum legislation allows Member States in implementing the Directive, and from the [pressure](#) on the reception capacity in some Member States.

The EU Fundamental Rights Agency (FRA) provides regular [updates](#) on fundamental rights in Member States most affected by new arrivals. Its 2016 [report](#) states that increased number of arrivals of asylum-seekers put significant strain on domestic asylum systems in countries of first arrival, countries of transit, and the main countries of destination. Despite the drop in new arrivals, the FRA [report](#) from 2018 shows that, regardless of the number of asylum applicants received, reception conditions in several EU Member States have not improved, and in some cases remain a cause for concern.

A 2016 [report](#) prepared by the European Council on Refugees and Exiles (ECRE) as part of the asylum information database (AIDA), which documents the conditions for reception of refugees and asylum-seekers in 17 Member States, shows that considerable increase in the number of asylum-seekers has placed reception capacities under strain for the majority of Member States. Member States face difficulties in adapting to higher reception demand, shortage of reception space, substandard living conditions, overcrowding, and difficulties in opening up new reception places.

According to a 2016 [study](#), commissioned by the European Parliament, reception conditions represent a very difficult field of harmonisation, as prospects in some Member States remain better than in others. The study shows that the reception conditions vary significantly between Member States, which triggers secondary movements and consequently prevents the implementation of any distribution mechanisms.



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In addition, there are also major challenges in terms of the number of reception places available in the Member States, which to some extent results from poor contingency planning and the failure to readily adapt to increasing reception needs.

A 2014 [report](#) by the European Migration Network ([EMN](#)) on the organisation of reception facilities for asylum-seekers in 23 Member States shows considerable differences between Member States in terms of type of facilities and actors involved in the provision of reception. In addition, although special reception needs for vulnerable persons are taken into account by Member States, there is wide diversity as to how those needs are satisfied in practice.

The case of Greece

Based on judgments of the European Court of Human Rights ([ECtHR](#)) and the Court of Justice of the European Union ([CJEU](#)), which identified systemic deficiencies in the Greek asylum system, including in terms of reception conditions, in 2011 the Member States suspended the transfer of applicants to Greece under the Dublin Regulation. According to this Regulation, the country of arrival is, in most cases, identified as responsible for the asylum application. Greece remains the main EU country of first entry from the [Eastern Mediterranean route](#) and has come under pressure after the closure of the [Western Balkans route](#). In addition, the [relocation schemes](#), intended to relieve Greece of this pressure, have not yet been fully implemented by Member States.

The European Commission has issued several recommendations calling on Greece to continue its efforts to ensure that reception conditions for asylum applicants meet the standards of the current Reception Conditions Directive. In the [latest](#), of 8 December 2016, it recommended the gradual resumption of the Dublin transfers to Greece for applicants who have entered Greece irregularly from 15 March 2017 onwards, or for whom Greece is responsible from 15 March 2017 under other Dublin criteria. However, according to a 2018 [report](#), reception conditions, notably on the Greek islands, remain a serious concern, especially regarding the accommodation for unaccompanied minors.



Proposal

The changes the proposal would bring

The [proposal](#) for a recast of the Reception Conditions Directive, presented on 13 July 2016, introduces substantial changes with the aim of further harmonising reception conditions in the EU, reducing incentives for secondary movements, and increasing applicants' self-reliance and prospects for integration.

Article 17(a) thus establishes that applicants are not entitled to material reception conditions (excluding necessary health care and subsistence and basic needs) when they are irregularly present in a Member State other than the one in which they are required to be present. In connection to this provision, the proposal requires Member States, where necessary, to assign applicants a residence in a specific place (Article 7) and link that residence to the right to material reception conditions (Article 7(2)). On this basis, Member States shall, where necessary, oblige applicants to regularly report to the authorities in case of risk of absconding (Article 7(3)).

The definition of family members in Article 2(3) and of material reception conditions in Article 2(7) are extended and include family relations formed after leaving the country of origin but before arrival on the territory of the Member State and non-food items, such as sanitary items, respectively.

As regards unaccompanied minors, Member States must, within five working days, assign a guardian to represent and assist those minors (Article 23). This is consistent with the EP's desire to protect and fulfil the needs of vulnerable groups.

The detention of applicants continues to be justified only when it proves necessary, based on individual assessment and if other, less coercive, alternative measures cannot be applied effectively. However, according to the proposal, applicants may be detained if they do not reside in the assigned place and when there is a risk they might abscond (Article 8(3)(c)).

The time limit for access to the labour market is reduced from nine to six months from lodging the application, when a decision on the asylum application has not been taken (Article 15(1)(1)). Member States can grant access no later than three months if the application is well-founded, and can refuse access if the application is likely to be unfounded (Article 15(1)(2)). The proposal also foresees that, after receiving access to the labour market, applicants should be entitled to equal treatment with nationals of Member States (Article 15(3)) in terms of working conditions, education and vocational training, freedom of association and affiliation, recognition of professional qualifications and social security. Member States can however limit those rights as regards family benefits and unemployment benefits.

The proposal also requires Member States to take reception standards and indicators developed by EASO (Article 27) into account and to draw up and update contingency plans to ensure adequate reception in cases of disproportionate pressure (Article 28).

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Views

Advisory committees

The Committee of the Regions considered the Commission proposal in its [opinion](#) on the reform of the common European asylum system (package II), adopted on 8 February 2017. It proposes to make absconding, with an absence for more than one month, a reason to reduce allowances. However, the Committee suggests only to reduce, not to withdraw allowances in cases of non-fulfilment of the applicant's obligations. According to the Committee, the proposal should also avoid setting binding deadlines as regards the appointment of a 'guardian'. The Committee also recommends the Commission to reconsider the provision in Article 17(a) whereby applicants do not have the right to any material assistance in Member States other than the Member State responsible. The Committee says the possibility of providing limited material assistance to an applicant who justifies their absence on grounds of necessity or force majeure should be maintained. It also calls for a commitment by the EU and its Member States to support, including financially, local authorities that help to guarantee dignified standards of living for all applicants.

The European Economic and Social Committee discussed the proposal in its [opinion](#) on the second CEAS reform package, adopted at the Committee's December 2016 plenary session. The Committee disagrees with the approach of excluding, reducing, withdrawing or replacing reception conditions, and instead supports a positive approach based on incentives in order to prevent secondary movements. While it welcomes the reduction of the time limit for access to the labour market from nine to six months, it calls for applicants from safe countries of origin to be given the right to such access in order to avoid discrimination on the basis of nationality. The Committee stresses the need to eliminate conditions on the right of access to employment, social security and social assistance and to ensure an absolute right of minors to education. It also calls for other family members, such as siblings and other relatives to be included in the directive in line with the Dublin regulation proposal.

National parliaments

Half of the Member States' national parliaments have initiated a process of scrutiny. The Italian Senate sent a [reasoned opinion](#), stating a violation of the subsidiarity and proportionality principles, while the [Czech Senate](#) and [Romanian Chamber of Deputies](#) have initiated political dialogue with the Commission over their concerns with the proposal. The deadline for the [subsidiarity check](#) in national parliaments was 10 November 2016.

Stakeholders' views²

In April 2015, UNHCR issued [comments](#) regarding certain provisions of the current directive. The UN Refugee Agency welcomed the guarantees and procedural safeguards concerning detention, vulnerable people and applicants with special reception needs, which have also been maintained in the new proposal.

² This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



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Stakeholders' views

UNHCR also issued recommendations, which the Commission took into account in the current proposal, such as that access to the labour market be granted within six months following the date the application was lodged and that Member States should recognise relationships that were formed during or after flight, among others.

UNHCR also expressed several concerns regarding provisions, which have been left unchanged in the current proposal. They include the possibility to detain an applicant for international protection in order to decide on his right to enter the territory, provisions that Member States may, for reasons of labour market policies, give priority to legally resident third-country nationals and that they may reduce, or withdraw in exceptional cases, reception conditions in the event of a subsequent application.

As regards the current proposal, the European Council on Refugees and Exiles (ECRE) issued similar [observations](#). It stated that provisions on exclusion of applicants who engage in secondary movements from an entitlement to reception conditions, and punitive restrictions in case of non-compliance with obligations, should be deleted. According to ECRE, several existing and proposed grounds for detention are incompatible with the EU Charter of Fundamental Rights, and the detention of persons with special reception needs should be explicitly prohibited. The organisation, however, welcomed the introduction of contingency plans as well as the improvements of the mechanism for identification of special reception needs.

The [Robert Schuman Foundation](#) stresses that harmonisation of reception conditions, as foreseen by the proposal, might not necessarily prevent secondary movements, as these are often the result of the existence of established diaspora and Member States' varying degrees of economic attractiveness. While the Migration Policy Group sees some positive developments for integration of applicants, the proposal's sanction system is said to risk delaying and categorically excluding potentially large numbers of asylum-seekers from receiving integration support. The [International Rehabilitation Council for Torture Victims](#) issued comments on the proposed directive, focusing on applicants with special needs. It expresses concerns regarding sanctions for those who do not comply with obligations and regarding restrictions or withdrawal of reception conditions. It states that torture victims must be exempt from detention and that applicants with special reception needs should always have access to full reception conditions, including rehabilitation. It also supports the obligation for systematic and timely assessment of special reception needs.



Legislative process

European Parliament

In the European Parliament, the proposal for a recast of the Reception Conditions Directive was assigned to the Civil Liberties, Justice and Home Affairs Committee (LIBE) under the rapporteurship of Sophia in 't Veld (ALDE, the Netherlands).

On 25 April 2017, the LIBE committee adopted by 37 votes to 9 a [report](#) on the proposal and a decision to open negotiations with the Council and the Commission in view of reaching a final agreement at first reading (Rule 69c). The decision to enter into interinstitutional negotiations was confirmed during the May 2017 plenary session.

The report adopted by the LIBE committee disagrees with the punitive approach proposed by the Commission towards applicants who try and move illegally to another Member State. Instead it proposes to strengthen measures needed to de-incentivise asylum applicants from leaving the Member State responsible for their application. Furthermore, Member States should in all circumstances ensure access to health care and an adequate standard of living for applicants.

According to the report, asylum-seekers should be able to work in the EU no later than two months after applying for asylum, instead of the current nine months. However, Member States may still fill a vacancy through preferential access by their nationals, other EU citizens or by third-country nationals lawfully residing in the country. Furthermore, applicants for international protection should also get access to language courses from the moment their application is filed.

As regards detention of asylum-seekers, this should be a measure of last resort and should always be based on a decision by a judicial authority. An applicant in detention should also have effective access to the necessary procedural guarantees, such as judicial remedy and the right to free legal assistance and representation. Detention or any confinement of children, whether unaccompanied or with families, should be prohibited. Member States must ensure that every unaccompanied minor gets a guardian from the moment of his or her arrival in the EU, as well as immediate access to health care and education under the same conditions as national minors.

The report also stresses that extra measures are necessary to protect the fundamental rights of applicants with special needs, and that rapid identification of those applicants and training of personnel in this regard are important.

Council

On 14 October 2016, on the basis of a [progress report](#) from the Presidency, the main concerns raised by Member States during the examination of the proposal included:

- > certain definitions, including 'family members', 'guardian', 'material reception conditions', 'risk of absconding';



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- > the deadline for Member States to fully inform the applicant of any benefit or the obligations relating to reception conditions;
- > the grounds for Member States to provide applicants with a travel document for serious humanitarian or other imperative reasons;
- > the shortened deadline for Member States to ensure that applicants have effective access to the labour market;
- > the equal treatment with nationals when recognising diplomas, certificates and other evidence of formal qualifications;
- > the insufficient sanctions for applicants who do not cooperate;
- > the obligation to systematically assess whether an applicant has special reception needs;
- > the deadline for appointing a guardian to represent and assist unaccompanied minors;
- > the obligation for Member States to take into account operational standards on reception conditions and indicators developed by the new EU Agency for Asylum;
- > the obligation for Member States to draw up, and regularly update, contingency plans;
- > the date for the transposition of the directive.

On 9 June 2017, ministers in the Justice and Home Affairs Council, on the basis of a [progress report](#) from the Maltese Presidency, took stock of work on the reform of CEAS, including the recast Reception Conditions Directive. The report highlights some of the remaining open issues, such as asylum applicants' access to the labour market, as well as measures to prevent secondary movements, including assignment of residence, detention and the reduction and withdrawal of material reception conditions. The report also states that progress on a number of outstanding issues is dependent on the progress achieved in the negotiation of other CEAS proposals, in particular the proposals on the [Dublin Regulation](#) and [Asylum Procedure Regulation](#).

On 29 November 2017, the Permanent Representatives Committee (Coreper) endorsed, on behalf of the Council, a [mandate](#) for trilogue negotiations on the proposal. The main elements of the mandate included:

- > applicants should receive an adequate standard of living and comparable living conditions in all Member States;
- > access to reception conditions should be provided in the Member State responsible for the application for international protection;
- > applicants should be afforded material reception conditions and access to health care, and have access to the labour market no later than nine months after lodging an application;



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- > applicants may be required to cover or contribute to the costs of their reception conditions if they have sufficient means;
- > Member States may restrict applicants' freedom of movement within their territory, assign them a specific place, define reporting obligations and, in case of risk of absconding, may make use of detention;
- > the EU Asylum Agency shall assist Member States in their preparation of contingency plans for a scenario with a disproportionate number of applicants.

Trilogues

The first trilogues between the Council and the Parliament started in December 2017. According to the Commission's [contribution](#) to the Leaders' meeting, a political agreement between the European Parliament and the Council was expected by May 2018.

On 14 June 2018, the EP and the Council reached a [provisional agreement](#) on the recast directive. Under the deal, asylum-seekers would be allowed to work six months after requesting asylum, instead of the current nine months. Applicants would also be entitled to health care, including mental as well as sexual and reproductive health care. Furthermore, they should get access to language courses from day one. Unaccompanied minors would be assigned a guardian immediately, while children would enter the school system as quickly as possible, no later than two months after arrival. Minors would not be sent to prison, and their detention would only be possible for family unity and protection purposes.

As the Council did not finally endorse the agreement in the Council, the Austrian Presidency returned to negotiations at technical level in the Council.

The European Council [conclusions](#) of 13-14 December 2018 called 'for further efforts to conclude negotiations on all parts of the Common European Asylum System', while the European Commission in a [communication](#) of 4 December 2018 called on the Member States and Parliament to transform the broad agreement already found on the proposal into final adoption.

A [progress report](#) from the Romanian Presidency in February 2019 indicated that some progress had been made within the Council in early 2019, but negotiations with the Parliament have yet to restart.



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