



# **Asylum on the Clock?**

## **Duration and review of international protection status in Europe**

June 2016



## Introduction\*

International protection granted to those fleeing persecution or serious harm must first and foremost entail a right of residence in the country of refuge. The nature and duration of that right, however, raise questions as to the foundational objectives of the international refugee regime. The 1951 Refugee Convention, forming the cornerstone of asylum policies across the globe, not least in the European Union (EU),<sup>1</sup> has left matters of refugee protection such as the content of residence rights for states to regulate, while requiring States to treat refugees as nationals with regard to a number of socio-economic rights. The only obligation relating to residence imposed by the Convention is that of issuing identity documents to refugees once their status is recognised.<sup>2</sup>

The EU's Common European Asylum System (CEAS) has developed a more detailed framework relating to the scope of persons eligible for international protection, as well as the rights attached to their status. The 2004 Qualification Directive,<sup>3</sup> harmonising recognition standards across Member States and recast in 2011,<sup>4</sup> extends beyond the remit of the Refugee Convention by setting out two forms of protection available under EU law: refugee status, for persons qualifying as refugees under the Convention definition, and subsidiary protection, for those who do not meet the criteria for refugeehood but face serious harm due to certain human rights violations in their country of origin.<sup>5</sup> Through this dual form of protection, the EU creates a complementary legal category of protected persons distinct from refugees. This design breaks away from its own commitment to provide a "uniform asylum status, valid throughout the Union",<sup>6</sup> on one hand, and from other regional approaches which have extended the refugee definition,<sup>7</sup> on the other.

Linking European policies to different approaches to refugee protection across the world is particularly important given the global scale of displacement challenges. In its Communication of 6 April 2016 on the forthcoming reform of the CEAS, the European Commission stated that:

"The EU has one of the most protective and generous asylum systems in the world, and the granting of international protection status in EU Member States has in practice almost invariably led to permanent settlement in the EU, while its original and primary purpose was to grant protection only for so long as the risk of persecution or serious harm persists..."<sup>8</sup>

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<sup>1</sup> Article 78(1) Treaty on the Functioning of the European Union (TFEU), *OJ* 2012 C326/47; Court of Justice of the European Union, Case C-604/12 *HN v Minister for Justice, Equality and Law Reform*, Judgment of 8 May 2014.

<sup>2</sup> Article 27 Refugee Convention.

<sup>3</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, *OJ* 2004 L304/12.

<sup>4</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), *OJ* 2011 L337/9.

<sup>5</sup> See Article 15 recast Qualification Directive.

<sup>6</sup> Article 78(2)(a) TFEU.

<sup>7</sup> See Article 1(2) Organisation of African Unity Convention Governing the Specific Aspects of Refugee Protection in Africa, Addis Ababa, 10 September 1969; Para III(3) Cartagena Declaration on Refugees, Cartagena, 22 November 1984.

<sup>8</sup> European Commission, *Towards a reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*, COM(2016) 197, 6 April 2016, 5.

It is crucial to note that this position, emphasising the time-bound and precarious nature of international protection, is voiced at a time when the refugee debate has become extremely heated and polarised. Restrictions leading to shorter residence rights and stricter approaches to cessation of protection statuses have emerged against the backdrop of over 1.3 million persons arriving in the EU in search of protection within a year.<sup>9</sup> Yet the assumption that the purpose of protecting refugees so long as risks prevail in their country of origin is in contradiction with traditions of permanent resettlement in countries of asylum seems to ignore the reality of displacement phenomena leading to forced migration. Most contemporary crises of displacement have been described as protracted, given that those affected have been displaced for long periods of time.<sup>10</sup> Displacement periods tend to last on average 10 years for internally displaced persons (IDPs) and as many as 25 years for refugees,<sup>11</sup> as reiterated by the European Commission's humanitarian services.<sup>12</sup>

This briefing tracks this policy tension through an examination of the EU rules and national practice relating to the duration of residence permits issued to persons granted international protection in Europe, and to the review of statuses of protection. For the purposes of this analysis, this briefing focuses on the two statuses of international protection governed by the Qualification Directive and thereby excludes non-harmonised forms of protection granted on humanitarian grounds. Analogies and contrasts are drawn between EU Member States, non-EU countries covered by the Asylum Information Database (AIDA) as well as examples from different regions of the globe.

The briefing argues that the precariousness of international protection status built into the Qualification Directive has led to a piecemeal, fragmented landscape vis-à-vis residence rights, but also to a strong tendency among most Member States to adopt more favourable standards to EU law.<sup>13</sup> It further discusses the integration and administrative challenges underlying rules to systematic review of refugee or subsidiary protection status, which are liable to exacerbate its precariousness.

### Duration of residence permits for protection purposes

The recast Qualification Directive, similar to its 2004 predecessor, endorses the premise of temporally limited grants of international protection. It sets out a minimal duration for residence permits issued to beneficiaries, which must however be renewable.<sup>14</sup> Refugees and subsidiary protection beneficiaries only become eligible for long-term residence after a period of 5 years from the grant of protection.<sup>15</sup> By design, the EU asylum *acquis* therefore contrasts with asylum systems in other regions of the world, where granting asylum opens up avenues for permanent residence. In **Canada**, recognised refugees are eligible for a permanent residence permit from the moment of recognition.<sup>16</sup> The **United States** also enables persons recognised as refugees on the territory ("asylees") to apply for permanent residence ("Green Card") just one year following recognition.<sup>17</sup> In **Australia**, on the other hand, protection granted

<sup>9</sup> Eurostat, *Asylum applicants Annual aggregated data*, migr\_asyappctza. Data on asylum applications for year 2015.

<sup>10</sup> European Commission, *Lives in Dignity: From Aid-dependence to Self-reliance: Forced Displacement and Development*, COM(2016) 234, 26 April 2016, 3. See further Gil Loescher & James Milner, *Protracted Refugee Situations: Domestic and international security implications* (Adelphi Books 2005), mentioning that 70% of the world's refugees are in protracted situation.

<sup>11</sup> UNHCR, *World at War: Global Trends 2014*, June 2015.

<sup>12</sup> European Commission, *Lives in Dignity: From Aid-dependence to Self-reliance: Forced Displacement and Development*, COM(2016) 234, 26 April 2016, 3.

<sup>13</sup> See Article 3 recast Qualification Directive.

<sup>14</sup> Under Article 24 of the recast Qualification Directive, the minimal duration of permits is 3 years for refugees and 1 year for subsidiary protection beneficiaries.

<sup>15</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ 2004 L16/44, as amended by Directive 2011/51/EU.

<sup>16</sup> Article 12(3) Canadian Immigration and Refugee Protection Act. Different residence rights are afforded to Designated Foreign Nationals, a special category used only for groups of Romanian nationals to date: Canadian Association of Refugee Lawyers, 'Designated Foreign Nationals Regime', available at: <http://goo.gl/8rplcG>.

<sup>17</sup> Sections 1208(21) and 1209(2) US Code of Federal Regulations.

on the territory (“onshore”) differentiates based on a refugee’s mode of arrival: a permanent Protection Visa is afforded to regularly arriving persons, while those arriving irregularly only qualify for a Temporary Protection Visa (TPV).<sup>18</sup> The TPV was in place between 1999 and 2008, leading to approximately 11,000 visa holders, the majority of whom eventually acquired permanent residence in Australia. Following its reintroduction in December 2014, the TPV remains a 3-year renewable permit but entails lower rights than its predecessor.<sup>19</sup>

In this regard, it should be noted that responsibility for refugee status determination and granting of protection has not – fully – been taken up by state authorities but is held by UNHCR in the main countries hosting the majority of the world’s refugees,<sup>20</sup> including **Turkey**,<sup>21</sup> the largest host worldwide.<sup>22</sup> Contrasting with avenues for long-term integration in other countries, the 2013 legal framework in Turkey specifically provides that beneficiaries of international protection or temporary protection are not eligible for transition from a short-term residence authorisation to a long-term residence permit.<sup>23</sup> The law therefore seems to confirm a policy excluding beneficiaries of international protection from prospects of long-term integration, in line with Turkey’s geographical limitation to the Refugee Convention.<sup>24</sup>

In contrast to US and Canadian practice, the Qualification Directive lays down minimum time limits for the validity of protection-related residence permits. Residence in the country of asylum must last at least 3 years for refugees and 1 year for beneficiaries of subsidiary protection.<sup>25</sup> The differential treatment in the duration of residence afforded to the two protection status holders was not substantially revised by the recast Directive at the behest of the Council,<sup>26</sup> despite a proposal by the Commission to opt for the same period of validity for both forms of international protection.<sup>27</sup> Beyond following the reform’s overall objective of establishing a uniform asylum status in accordance with the Treaty,<sup>28</sup> the reasoning of the recast proposal sheds light on the very essence of the two protection statuses:

“When subsidiary protection was introduced, it was assumed that this status was of a temporary nature. As a result, the Directive allows Member States the discretion to grant them a lower level of rights in certain respects. However, practical experience acquired so far has shown that this initial assumption was not accurate. It is thus necessary to remove any limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified.”<sup>29</sup>

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<sup>18</sup> Refugee Council of Australia, *Temporary Protection Visas*, September 2013, available at: <http://goo.gl/suhYNB>; Kaldor Centre for International Refugee Law, *Factsheet: Temporary Protection Visas*, April 2015, available at: <http://goo.gl/bQqIZy>.

<sup>19</sup> *Ibid.*

<sup>20</sup> Pakistan is not a party to the Refugee Convention and status determination is conducted by UNHCR: UNHCR Pakistan, *Asylum System in Pakistan*, available at: <http://goo.gl/LvO0wx>.

<sup>21</sup> For a discussion of the state of play of transition of responsibility from UNHCR to the Directorate-General for Migration Management (DGMM), see AIDA Country Report Turkey: First Update, December 2015, in particular 15 and 18-20.

<sup>22</sup> UNHCR, *World at War: Global Trends 2014*, June 2015.

<sup>23</sup> Article 42 Turkish Law on Foreigners and International Protection.

<sup>24</sup> Information provided by Refugee Rights Turkey, 13 June 2016.

<sup>25</sup> Article 24(1)-(2) recast Qualification Directive.

<sup>26</sup> See Council of the European Union, 12337/1/11 REV 1, 6 July 2011. The final Article 24(2) recast Qualification Directive has only included an obligation to provide for the renewal of residence permits of beneficiaries of subsidiary protection for at least two years.

<sup>27</sup> European Commission, *Proposal for a [recast Qualification Directive]*, COM(2009) 551, 21 October 2009, 36.

<sup>28</sup> Recital 39 recast Qualification Directive. The recital exempts only “derogations which are necessary and objectively justified” from the alignment of the two statuses.

<sup>29</sup> European Commission, *Proposal for a [recast Qualification Directive] – Explanatory Memorandum*, COM(2009) 551, 21 October 2009, 8.

There has indeed been little justification to date for the presumption that subsidiary protection is a more temporary status to that of Convention refugees so as to legitimately distinguish the duration of residence permits. In practice, Member States have still not been consistent in the treatment of asylum claims, even for the same country of origin. The year 2015 saw for instance the vast majority of Syrians – a nationality widely acknowledged as in need of international protection – being granted almost exclusively refugee status in **Germany, Austria, Greece, Bulgaria** or **Norway**, while **Sweden, Spain, Cyprus** and **Malta** overwhelmingly granted subsidiary protection.<sup>30</sup> More recently, countries such as **Germany** have shown stronger tendencies towards granting subsidiary protection to Syrians.<sup>31</sup> For national asylum authorities, this indicates that a sharp conceptual distinction between the two statuses does not apply in practice. For refugees, it means “protection lottery”.

The uneasy divisions between the two statuses appear all the more crucial given the Commission’s intention to “better clarify the difference between the refugee and subsidiary protection status and differentiate further the respective rights attached to them.”<sup>32</sup> The forthcoming proposal to reform the Qualification Directive could therefore lead to sharper distinctions between the two statuses, to the detriment of those obtaining subsidiary protection.

### *The EU rules transposed*

When translated into national standards, the Qualification Directive leads to a considerably fragmented space of protection statuses across Europe. As illustrated in [Annex I](#), rules on the duration of residence rights for refugees and subsidiary protection beneficiaries have been transposed widely differently across Member States bound by the Directive, while other rules apply in Denmark and neighbouring third countries.

The comparison of national legislative frameworks yields a number of important conclusions. On one hand, in keeping with the Directive’s aim to align the rights attached to refugee status and subsidiary protection, as many as six Member States have established a uniform rule on the duration of residence permits for both refugees and subsidiary protection beneficiaries. These include **Finland, Greece, Italy, Luxembourg, Malta**, the **UK** and the **Netherlands**.

The rules relating to duration of permits at national level also reveal that a significant number of countries have opted for higher standards in the issuance of residence permits to beneficiaries of international protection. Three-quarters of EU Member States – 21 out of 28 – maintain more favourable standards than the threshold of the recast Qualification Directive, many of which specifically afford greater security of residence to persons qualifying for subsidiary protection. These examples seem to support approaches of longer-term refuge to those fleeing persecution or serious harm, contrary to the ostensibly time-restricted character of protection status under the CEAS. Nevertheless, recent reforms

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<sup>30</sup> Eurostat, *First instance decisions Annual aggregated data*, migr\_asydecfsta. Subsidiary protection rates for Syrians in 2015 were 97.8% in Cyprus, 92.7% in Malta, 90.1% in Spain and 87.5% in Sweden.

<sup>31</sup> Compared to a subsidiary protection rate of 0.06% (61 grants) in 2015, Germany’s subsidiary protection rate for Syrians rose to 4.2% (4,018) in April 2016: BAMF, *Asylgeschäftsstatistik Dezember 2015; Asylgeschäftsstatistik April 2016*. For a discussion, see ProAsyl, ‘Neue Asylpraxis beim BAMF: Immer mehr Syrerinnen und Syrer kriegen “nur” subsidiären Schutz’, 20 May 2016, available in German at: <https://goo.gl/K502h>.

<sup>32</sup> European Commission, *Towards a reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*, COM(2016) 197, 6 April 2016, 10.

in countries such as **Belgium**,<sup>33</sup> **Austria**,<sup>34</sup> **Denmark**,<sup>35</sup> **Hungary**<sup>36</sup> and **Sweden**<sup>37</sup> have sought to lower the security of residence afforded to refugees by introducing time limits to residence permits which were previously permanent. The following time limitations have been introduced:

Country	Refugee status (in years)		Subsidiary protection (in years)	
	Before	After	Before	After
Austria	Permanent	3	1	1
Belgium	Permanent	5	1	1
Denmark	5	2	5	1
Hungary	10	10	5	3
Sweden <sup>38</sup>	Permanent	3	Permanent	1

In contrast, the recent immigration law reform in **France** extended the duration of residence permits awarded to beneficiaries of subsidiary protection from 1 to 2 years.<sup>39</sup>

#### *Delays in the issuance and renewal of permits*

While the issuance of a residence permit is the direct result of granting international protection, in practice, there can be a significant time-lag between the two acts. The evaluation of the recast Qualification Directive prepared for the European Commission has noted delays ranging from 2 weeks to 6 months in certain countries before a permit is issued. Whereas Member States such as **Bulgaria**, **Italy** or **Sweden** take at least one month before issuing a permit,<sup>40</sup> in **Cyprus** beneficiaries of protection may encounter delays of up to 2 months in securing their first appointment to apply for a permit, after which they wait another 2-3 months before the document is issued. However, following interventions from UNHCR and NGOs, Cypriot authorities issue a receipt upon submission of the application for a residence permit, which may be relied upon by the beneficiary to access rights.<sup>41</sup> A similar receipt is issued in **Malta**, where beneficiaries also have to wait several months, yet this has no real legal value as it does not enable them to access rights before their permit is issued.<sup>42</sup>

Similar delays were reported in **Belgium** after a backlog of cases created in the summer of 2015, due to which refugees had to wait up to 3 months to obtain their permit, even though they are only allowed to stay in reception centres for 2 months following recognition.<sup>43</sup> This is also expected to become a challenge in **Hungary**, where beneficiaries of protection wait at least 1 month before obtaining a permit and as of 1 June 2016 may only reside in reception centres for 1 month following recognition.<sup>44</sup>

<sup>33</sup> Belgian Parliament, Draft Law amending the Aliens Act, 28 April 2016, available at: <https://goo.gl/h4EU5Z>. The law has been adopted but not yet published: Information provided by Ruben Wissing, 9 June 2016.

<sup>34</sup> See e.g. Asylkoordination Österreich et al, *Stellungnahme Agenda Asyl: Zum Bundesgesetz, mit dem das Asylgesetz geändert wird*, November 2015.

<sup>35</sup> UNHCR Northern Europe, *UNHCR Observations on the proposed amendments to the Danish Aliens Legislation L 87*, January 2016, available at: <http://goo.gl/VViKqH>.

<sup>36</sup> See AIDA, 'Hungary: New reform to undercut reception conditions for asylum seekers', 15 March 2016, available at: <http://goo.gl/8eXDom>.

<sup>37</sup> Swedish Government, 'Proposal to temporarily restrict the possibility of being granted a residence permit in Sweden', 8 April 2016, available at: <http://goo.gl/Y2l72r>.

<sup>38</sup> Under the proposed reform, residence permits for refugees will be valid for 3 years and 13 months for beneficiaries of subsidiary protection, from 20 July 2016 to 19 July 2019: Information provided by Lisa Hallstedt and FARR, 13 June 2016.

<sup>39</sup> Article L313-13 *Ceseda*, as amended by Article 17 Law no. 2016/274 of 7 March 2016 relating to the law of aliens in France.

<sup>40</sup> ICF, *Evaluation of the application of the recast Qualification Directive*, Forthcoming.

<sup>41</sup> Information provided by the Future Worlds Center, 1 June 2016.

<sup>42</sup> Information provided by aditus foundation, 13 June 2016.

<sup>43</sup> Information provided by Ruben Wissing, 9 June 2016.

<sup>44</sup> Information provided by the Hungarian Helsinki Committee, 13 June 2016.



Conversely, refugees in **France** have faced delays of over one year before obtaining their residence permit in some cases, often related to minor mistakes in their recorded personal details.<sup>45</sup>

In **Greece**, beneficiaries of subsidiary protection and protection on humanitarian grounds have faced severe obstacles to renewal of their permits by police authorities in 2014 and 2015.<sup>46</sup> Barriers were due to a number of factors, ranging from systematic rejection of renewal of subsidiary protection without due justification,<sup>47</sup> to severe delays in the renewal of permits, leading beneficiaries to wait for months up to years before renewal.<sup>48</sup> The situation seems to have improved at the moment, though no statistical information is collected on renewals of permits issued under the “old procedure” governed by the police.<sup>49</sup> Similar problems have been reported in **Italy**, since the renewal application is submitted back to the Commission on International Protection which granted the initial status to verify whether serious crimes have been committed, which allows for a refusal to renew the permit.<sup>50</sup>

Beyond the EU, **Turkey** has encountered severe delays in issuing temporary protection identification documents to those benefitting from its temporary protection regime, due to waiting periods of up to 6 months between a person’s application and completion of the registration process.<sup>51</sup>

#### *Other barriers to the issuance of permits*

Beyond delays in the issuance of permits, difficulties may arise concerning the entitlement of family members of beneficiaries of protection to a residence permit. In **France**, where parents of minor beneficiaries are *ipso jure* granted a permit,<sup>52</sup> parents accompanying girls who obtain refugee status for reasons of female genital mutilation (FGM) often have their claims rejected, or have been granted a residence permit of one year instead of ten years, according to practice reported in the regions of Paris, Hauts de France and Auvergne Rhône-Alpes.<sup>53</sup>

Another obstacle reported in **France** concerns beneficiaries of subsidiary protection, for whom the French Office of Protection of Refugees and Stateless Persons (OFPRA) drew a distinction between persons fleeing serious harm from state actors (Type 1) and those who may request documents from their authorities as the risk of serious harm stems from non-state actors (Type 2). For “Type 2” beneficiaries who were not able or hesitated to request official documentation from the embassy of their country of origin, OFPRA would not issue a residence permit. OFPRA has, however, announced to non-governmental organisations its intention to abandon the distinction between the two categories, with a view to issuing the necessary documentation to all beneficiaries of subsidiary protection.<sup>54</sup>

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<sup>45</sup> Information provided by Forum Réfugiés-Cosi, 9 June 2016.

<sup>46</sup> Applications for the renewal of permits have not yet been presented before the Asylum Service, which started operating in June 2013. However, given that the Joint Ministerial Decision on the issuance of residence permits was not issued until August 2014, individuals were not provided with residence permits during the first year of the Asylum Service’s operation: Information provided by the Greek Council for Refugees, 10 June 2016.

<sup>47</sup> See Greek Council for Refugees, Letter No 68/2.2.2015, “Rejections of subsidiary status renewal applications”, specifically referring to Iraqi nationals. For holders of humanitarian protection permits, see Greek Council for Refugees, *Communication in the case of M.S.S. v. Belgium and Greece*,

<sup>48</sup> Information provided by the Greek Council for Refugees, 10 June 2016; Greek Forum of Refugees, ‘Subsidiary protection and residence permit on humanitarian grounds creating unstable life and uncertain future’, 25 April 2016, available at: <http://goo.gl/Us6XrO>.

<sup>49</sup> Information provided by the Greek Council for Refugees following a reply from Directorate of the Hellenic Police, 10 June 2016. On the “old procedure”, see AIDA Country Report Greece: Fourth Update, November 2015.

<sup>50</sup> Information provided by ASGI, 15 June 2016.

<sup>51</sup> Information provided by Refugee Rights Turkey, 13 June 2016.

<sup>52</sup> Article L314-11(8) French Ceseda.

<sup>53</sup> Information provided by Forum Réfugiés-Cosi, 9 June 2016.

<sup>54</sup> Information provided by Forum Réfugiés-Cosi, 9 June 2016.

In **Serbia**, despite their entitlement to a permanent residence permit under the Asylum Act, recognised refugees are not issued a separate document of residence, as they are considered *de facto* to be entitled to reside in the country. Due to this interpretation, refugees hold no documentation that certifies their status so as to enjoy their rights.<sup>55</sup> Conversely, in **Italy** and **Malta**, beneficiaries face undue barriers to obtaining a permit such as requirements to provide a registered address, as a result of which those unable to afford housing have not been in a position to receive a permit.<sup>56</sup>

Other practical requirements are often prohibitive for beneficiaries of protection in **Poland**, where residence cards are only issued in Warsaw and must be collected in person, while the issuance of such cards is under no circumstances free of charge.<sup>57</sup>

### **Cessation and automatic review of protection status**

Since the duration of residence permits is inextricably linked to broader questions of the precariousness of granting international protection, it also relates to questions of the circumstances of their cessation. The Refugee Convention sets out rules for the cessation of refugee status, relating either to the conduct of the person or to the circumstances leading to his or her recognition. According to Article 1C(5) of the Convention, the “ceased circumstances” clause, cessation of refugee status comes about when the circumstances “in connection with which” status was granted have ceased to exist. Given that asylum in the EU remains fragmented into two statuses under the recast Qualification Directive, however, the cessation test to be applied by Member States differs for refugees and subsidiary protection beneficiaries. While cessation of refugee status builds on the cessation clause of the Convention,<sup>58</sup> subsidiary protection status may be ceased where the circumstances “which led” to its grant have “ceased to exist or have changed to such a degree that protection is no longer needed.”<sup>59</sup>

For countries that offer permanent residence to refugees, though not necessarily to those granted subsidiary protection, the notion of cessation does not entail precariousness in the residence rights of beneficiaries. Beyond Europe, in the **United States**, while the status of asylum can be ceased due to a change of circumstances, the possibility to obtain a Green Card after 1 year reduces the impact of cessation on permanent residence. Conversely, **Canada** provides for revocation of permanent residence when cessation occurs on the basis of the individual person’s conduct, as per Article 1C(1)-(4) of the Refugee Convention, but not on the basis of the “ceased circumstances” clause.

A “systematic and regular check” of international protection needs has been suggested by the Commission in the prospective reform of the Qualification Directive, with a view to ensuring that residence rights are only renewed for those who continue to be at risk of persecution or serious harm.<sup>60</sup> In **Germany**, the Asylum Act has long contained a provision of automatic review of refugee status at the latest after 3 years, although this does not apply to subsidiary protection.<sup>61</sup> However, this review is no longer mandatory for all cases as of August 2015.<sup>62</sup> Recent reforms directed at a restriction of rights granted to beneficiaries of international protection in other countries such as **Austria** and **Hungary** have introduced automatic review of status after a period of 3 years.<sup>63</sup> This may be less systematic in

<sup>55</sup> Information provided by the Serbian ELENA Coordinator, October 2015.

<sup>56</sup> Information provided by aditus foundation, 13 June 2016; ASGI, 15 June 2016.

<sup>57</sup> Information provided by the Helsinki Foundation of Human Rights, 9 June 2016.

<sup>58</sup> Article 11 recast Qualification Directive. See CJEU, Joined Cases C-175/08, C-176/08, C-178/08 and C-179-08 *Abdulla v Bundesrepublik Deutschland*, Judgment of 2 March 2010.

<sup>59</sup> Article 16 recast Qualification Directive.

<sup>60</sup> European Commission, *Towards a reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*, COM(2016) 197, 6 April 2016, 11.

<sup>61</sup> Section 73(1) German Asylum Act.

<sup>62</sup> Information provided by Informationsverbund Asyl und Migration, 7 June 2016.

<sup>63</sup> See e.g. Asylkoordination Österreich et al, *Stellungnahme Agenda Asyl: Zum Bundesgesetz, mit dem das Asylgesetz geandert wird*, November 2015; AIDA, ‘Hungary: New reform to undercut reception conditions for asylum seekers’, 15 March 2016, available at: <http://goo.gl/8eXDom>.



practice in the case of Austria: as of 1 June 2016, the three-year residence permit offered to refugees gives rise to a permanent residence permit *ex officio*, unless there are indications of a change of circumstances in the country of origin warranting a cessation procedure.<sup>64</sup> The possibility to review international protection needs also exists upon renewal of the residence permit in countries such as **Greece** and the **UK**.<sup>65</sup>

However, refugee or subsidiary protection status is not currently systematically revoked on the basis of ceased circumstances in most Member States,<sup>66</sup> while this clause does not seem to have been applied until now in **Turkey**.<sup>67</sup> The only recent use of the cessation clause to specific groups has been reported in **Cyprus**, relating to Iraqis in 2011-2012,<sup>68</sup> while **Finland** and **France** have applied cessation of status to persons recognised in the 1990s.<sup>69</sup> In **Germany**, only 3% of the 9,894 “revocation examination procedures” conducted in 2015 resulted in withdrawal of international protection, mainly concerning Turkish or Kosovar nationals.<sup>70</sup> In **Poland**, cessation in 2015 has been applied principally to Russian nationals on grounds of voluntary re-availment of protection by travel to their country of origin rather than ceased circumstances.<sup>71</sup> In some cases, **Hungary** has also refused to renew status for Afghan beneficiaries of subsidiary protection on the basis that returns to Afghanistan may be carried out.<sup>72</sup>

The limited use of cessation clauses in the EU seems grounded both in protection-related and administrative concerns. Firstly, a systematic reconsideration of protection status would severely reduce protected persons’ security and undermine their prospects of integration in host communities. Stable residence is an essential precondition for effective integration,<sup>73</sup> but is not necessarily taken into consideration in the EU’s integration strategy; it does not seem to be coherently addressed in the recently tabled EU Action Plan on integration of third-country nationals, for instance.<sup>74</sup>

Secondly, a systematic review of protection needs would prove highly resource-intensive for asylum authorities in Member States. In light of these difficulties, contrary to proposals put forward in **Austria** or **Hungary**, the privileged process of obtaining a permanent residence permit (*Niederlassungserlaubnis*) for refugees in **Germany** has been simplified as of August 2015, as the local Aliens Offices no longer need a formal notification from the Federal Office for Migration and Refugees (BAMF) of the outcome of a status review before granting the permit; permanent residence is granted unless the BAMF has issued a notification to the contrary.<sup>75</sup>

## Concluding remarks

The Common European Asylum System has conceived of international protection as a precarious and time-bound right. The short-term design of residence permits under the Qualification Directive not only

<sup>64</sup> Information provided by Asylkoordination Österreich, 10 June 2016.

<sup>65</sup> Information provided by the Greek and British ELENA Coordinators, March 2016.

<sup>66</sup> European Migration Network, *Ad-Hoc Query on reconsidering protection needs*, 2015/699, 21 August 2015. See also ICF, *Evaluation of the application of the recast Qualification Directive*, Forthcoming; Information provided by the Irish Refugee Council, 10 June 2016; ACCEM, 10 June 2016; Forum Réfugiés-Cosi, 9 June 2016; aditus foundation, 13 June 2016; ASGI, 15 June 2016.

<sup>67</sup> Information provided by Refugee Rights Turkey, 13 June 2016.

<sup>68</sup> See also ICF, *Evaluation of the application of the recast Qualification Directive*, Forthcoming. See also information provided by the Future Worlds Center, 1 June 2016.

<sup>69</sup> *Ibid.* For instance, Finland has applied the clause to Bosnian nationals, while France has applied it to Chilean, Romanian and Bulgarian nationals.

<sup>70</sup> Information provided by Informationsverbund Asyl und Migration, 7 June 2016.

<sup>71</sup> Information provided by the Helsinki Foundation of Human Rights, 9 June 2016. This reasoning was confirmed by the Supreme Administrative Court, Judgment No II OSK 1493/14, 23 February 2016.

<sup>72</sup> Information provided by the Hungarian Helsinki Committee, 13 June 2016.

<sup>73</sup> ECRE, *The Way Forward: Towards the Integration of Refugees in Europe*, July 2005, 3; UNHCR, *Note on the Integration of Refugees in the European Union*, May 2007, 6.

<sup>74</sup> European Commission, *Action plan on the integration of third-country nationals*, COM(2016) 377, 7 June 2016.

<sup>75</sup> Information provided by Informationsverbund Asyl und Migration, 7 June 2016.

contrasts with refugee protection traditions in other parts of the world such as Canada and the US, but is not applied by a large number of Member States which have laid down more favourable provisions for those receiving refugee or subsidiary protection status. The distinction in the duration of rights available to refugees and subsidiary protection beneficiaries also seems inconsistent the Commission's own position before the 2011 recast Directive, as well as the uniform duration of residence permits applied to the two statuses by six Member States.

The recent emphasis on amendments to the Qualification Directive with a view to systematic reviews of status comes as another illustration of a 'ticking clock' approach to international protection. However, this is not reflected in the current practice of most Member States, which refrain from revisiting statuses for protection reasons related both to integration and long-term settlement of beneficiaries, but also practical reasons in view of the bureaucratic processes and administrative resources required for such assessments. The value of mechanisms for systematic review of international protection needs therefore appears to be questionable in reality.

## Annex I: Duration of residence permits for beneficiaries of international protection

Country	Legal basis	Duration of residence permit (in years)	
		Refugee status	Subsidiary protection
<i>EU minimum</i>	Article 24 Qualification Directive	●●●	●
Austria	Article 8(4) Asylum Act	●●●	●
Belgium	Article 49 Aliens Act	●●●●●	●
Bulgaria	Article 6 Trans. Prov. LAR	●●●●●	●●●
Cyprus	Articles 18A(3) and 19(4) Refugee Law	●●●	●
Czech Rep.	Sections 50 and 53a Asylum Act	Permanent	●
Germany	Section 26 Residence Act	●●●	●
Denmark	Aliens Act as reformed	●●	●
Estonia	Article 38 AGIPA	●●●	●
Spain	Article 36(1)(c) Asylum Law	●●●●●	●●●●●
Finland	Section 53(7) Aliens Act	●●●●	●●●●
France	Articles L313-13 and L314-11(8)-(10) Ceseda	●●●●●●●●●●	●●
Greece	Article 21 Law 4375/2016	●●●	●●●
Croatia	Article 75 LITP	●●●●●	●●●
Hungary	Section 23 Gov. Decree 251/2007	●●●●●●●●●●	●●●
Ireland		Permanent	●●●
Italy	Article 23 LD 251/2007	●●●●●	●●●●●
Lithuania	Article 89 Law on Status of Foreigners	Permanent	●
Latvia	Section 36 Asylum Act	Permanent	●
Luxembourg	Article 57 LITP	●●●	●●●
Malta	Article 20 Refugee Regulations	●●●	●●●
Netherlands	Article 28 Aliens Act	●●●●●	●●●●●
Poland	Article 89i Law on Protection	●●●	●●
Portugal	Article 67 Law 26/2014	●●●●●	●●●
Romania	Article 20(5) Asylum Act	●●●	●
Sweden <sup>76</sup>	Aliens Act to be reformed	●●●	●
Slovenia	Section 91 International Protection Act	Permanent	●
Slovakia	Section 24 Asylum Act	Permanent	●
UK	Rule 339Q Immigration Rules	●●●●●	●●●●●
Norway	Section 60 Immigration Act	●●●	●●●
Switzerland <sup>77</sup>	Articles 58ff and 83ff Asylum Act	●	●
Serbia	Articles 43 and 61 Asylum Act	Permanent	●
Turkey <sup>78</sup>	Article 83 LFIP	●	●

Fields marked in blue indicate more favourable standards adopted by EU Member States compared to the Qualification Directive.

<sup>76</sup> Permits issued to beneficiaries of subsidiary protection will be valid for 13 months under the proposed reform.

<sup>77</sup> Switzerland has a “temporary admission” regime, not subsidiary protection. The “F-Permit” issued in cases of temporary admission does not amount to a residence permit, but rather as a confirmation that deportation is suspended: Information provided by the Swiss Refugee Council, 9 June 2016.

<sup>78</sup> Beneficiaries do not receive a residence permit, but rather an identification document. This refers to “conditional refugees” i.e. persons originating from non-European countries. Refugees recognised under the Refugee Convention in Turkey are entitled to a 3-year identification document: Information provided by Refugee Rights Turkey, 13 June 2016.