

# Reception of asylum-seekers – recast directive

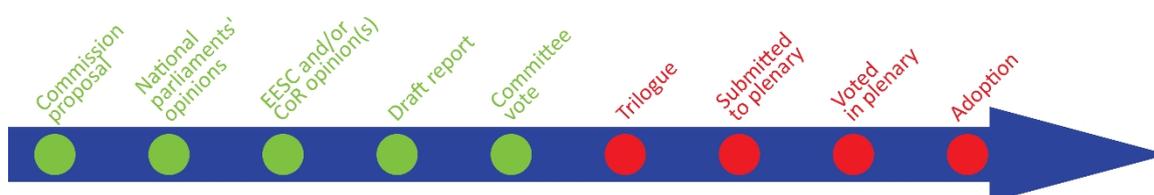
## OVERVIEW

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.

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

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2016)0465 of 13.7.2016
<i>Rapporteur:</i>	Sophia in 't Veld (ALDE, the Netherlands)	2016/0222(COD)
<i>Shadow rapporteurs:</i>	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)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Launch of trilogue negotiations	



## 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.<sup>1</sup>

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).

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. 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.

**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. The report mentions in particular: inadequate housing, such as overcrowded temporary facilities; desperate and deteriorating conditions at the borders; and overcrowded and inadequate reception facilities. Inadequate reception facilities in some Member States expose certain groups of asylum-seekers to risks of sexual and gender-based violence. The report also focuses on the specific needs of children, stating that children are often accommodated in adult facilities; that unaccompanied children continue to be detained; and that there are delays in appointing guardians.

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. 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.

#### **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).

## 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, which are likely to start in autumn 2017, was confirmed during the May 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**

The Council is expected to adopt its general approach on the proposal for a recast of the Reception Conditions Directive in autumn 2017.

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 14 October 2016, on the basis of a previous [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';
- 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.

### EP supporting analysis

- [Towards a reform of the Common European Asylum System, European Parliament](#), EPRS, May 2016.
- [Regulation 604/2013 \(Dublin Regulation\) and asylum procedures in Europe](#), European Parliament, EPRS, April 2016.
- [Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#), European Parliament, EPRS, December 2015.
- [Reception of female refugees and asylum-seekers in the EU case study Belgium: in-depth analysis](#), European Parliament, Policy Department C, May 2016.
- [Reception of female refugees and asylum-seekers in the EU case study Germany: study](#), European Parliament, Policy Department C, January 2016.
- [The Reform of the Dublin III Regulation](#), European Parliament, Policy Department C, June 2016.
- [The Implementation of the Common European Asylum System](#), European Parliament, Policy Department C, May 2016.

### Other sources

[Reception of applicants for international protection. Recast](#), European Parliament, Legislative Observatory (OEIL).

### Endnotes

<sup>1</sup> 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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