



Secondary movements of beneficiaries of international protection

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1. INTRODUCTION

Secondary movements of persons already granted international protection status affect EU Member States in different ways and to a different extent, depending, for instance, on the number of persons as well as on the reasons for which people decide to leave the first Member State that granted them the protection status. Secondary movement is defined in this inform as the onward migration of beneficiaries of international protection from a first State for the purpose of applying for international protection or finding another basis to reside legally in the second Member State.

While in recent years, applicants for international protection who fell within the scope of the Dublin III Regulation,¹ and whose procedure had not been completed, or who moved to other Member States following the rejection of their application, have been at the forefront of political discussions and negotiations, their situation has been already covered in other research² and will not be considered in this inform. In contrast, the secondary movements of beneficiaries of international protection (which under

specific conditions are provided for under relevant instruments³ of the EU acquis, but might have other implications for the receiving Member States' asylum systems), have received little attention so far.

Studies looking into the living conditions of recognised beneficiaries of international protection suggest that beneficiaries are more motivated to explore further migration opportunities when basic needs are not met. The reasons for beneficiaries of international protection moving to other Member States vary, according to these studies, and may include, *inter alia*: insufficient living conditions and available housing; the presence of ethnic and family networks in another Member State; lacking opportunities for integration and social participation; difficult access to work and study as well as limited access to healthcare and social security in the first State.⁴

In light of this, the aim of this inform is twofold. It firstly examines how Member States regulate the transfer of responsibility for a beneficiary of international protection

¹ This inform does not concern the transfer of responsibility for examining an application for international protection as set out in the Dublin III Regulation.

² See for example Obermann, L., Vergeer, S., 'Secondary movements of asylum seekers in the EU: Research Report', <https://www.adviescommissievoorvreemdelingenzaken.nl/binaries/adviescommissievoorvreemdelingenzaken/documenten/publicaties/2019/11/05/increasing-onward-migration-of-asylum-seekers-in-the-eu/Secondary+movements+of+asylum+seekers+in+the+EU+accessible.pdf>, last accessed on 17 August 2022.

³ According to the Schengen Border Code, beneficiaries of international protection as holders of residence permits may stay in another Member State for an intended stay of 90 days per period of 180 days. This only applies to members of the Schengen area which encompasses most EU countries, except for Bulgaria, Croatia, Cyprus, Ireland and Romania. By virtue of specific association agreements, the Schengen area also includes the EFTA states: Switzerland, Norway, Iceland, Liechtenstein. When beneficiaries of international protection meet the requirements for long-term resident status in the EU (i.e. 5 years of continuous residence), they can assert the resulting mobility rights. In Ireland, holders of a Convention travel document may not be subject to an Irish visa requirement for short stays of up to 90 days in Ireland if the travel document was issued by a European State that is a contracting party to the European Agreement on the Abolition of Visas for Refugees.

⁴ See for example: Pasetti F. & Conte C. (2021), Refugees and Beneficiaries of Subsidiary Protection: Measuring and Comparing Integration Policies. Global Policy Vol.12.; Bottinick, L. & Sianni, A. (2011). No place to stay: A review of the implementation of UNHCR's urban refugee policy in Bulgaria. PDES/2011/04. Walther, L., Fuchs, L.M., Schupp, J. et al. Living Conditions and the Mental Health and Well-being of Refugees: Evidence from a Large-Scale German Survey. J Immigrant Minority Health 22, 903-913 (2020). <https://doi.org/10.1007/s10903-019-00968-5>, last accessed on 17 August 2022..

from the first State to the second State.⁵ Such transfer of responsibility is understood as per Art. 28 of the Geneva Convention on Refugees (Geneva Convention) and Art.2 of European Agreement on Transfer of Responsibility for Refugees (EATRR) which refers to transfer of responsibility for issuing the travel document for refugees. Member States may also opt to take responsibility for granting further rights (see section 3.2 below).

Secondly, the inform explores the situation where beneficiaries of international protection, already recognised in a first State, lodge applications for international protection in a second State.

The scope of this inform includes all persons who have been granted international protection status (refugee status or subsidiary protection), and are present in the territory of a second State⁶ in the following situations:

- (i) they have obtained, or are in the process of obtaining, a valid residence permit (e.g. on the basis of employment, education/study, etc.); or
- (ii) they have made a further application for international protection.

The analysis in this inform was prepared on the basis of contributions from 21 Member States.⁷



2. KEY POINTS TO NOTE

- In recent years, the secondary movement of beneficiaries of international protection has been the subject of references to the Court of Justice of the European Union, and in some Member States the scale of the phenomenon is increasing.
- There are no regulations under EU law on the transfer of responsibility for beneficiaries of international protection. Transfer of responsibility refers in this context to the issuance of a travel document for refugees, but Member States may also opt to take responsibility for granting of full protection responsibility and further rights. At national level, Member States apply different legal bases, including (i) EATRR, (ii) national legislation and/or (iii) bilateral agreements, for the transfer of responsibility of beneficiaries of international protection. In six Member States⁸ – primarily those that have ratified the EATRR – the transfer of responsibility concerns the issuance of travel documents for refugees only. Seven Member States⁹ offer an extended transfer

of responsibility, which also includes granting other rights.

- The main criterion applied by the second Member State¹⁰ when processing a transfer of responsibility request¹¹ is that the person is already residing lawfully in the first Member State in accordance with the national legislation and should hold a valid residence permit there¹². This is typically determined by the length of stay and the type of residence permit obtained.
- The main challenge encountered by some Member States¹³ is the lack of an uniform legal base regarding the transfer of responsibility of beneficiaries of international protection. Not all Member States have ratified the EATRR, and few bilateral agreements have been put in place. Some Member States¹⁴ also reported communication challenges with other countries.



3. POLICY AND LEGAL CONTEXT

Under the current EU and international legal framework, several options exist for beneficiaries of international protection to travel and reside in another Member State, including short-term forms of mobility under the Schengen Borders Code, intra-EU mobility based

on the Directive 2003/109/EC¹⁵ ('Long-Term Residence' Directive) and transfer of responsibility for issuing travel documents under international instruments, including the Geneva Convention¹⁶ and the EATRR.¹⁷

5 The first Member State is the country which originally granted international protection, and the second Member State is where the beneficiary of international protection (wishes to) moves to.

6 In certain conditions, the stay of these third-country nationals can be considered as irregular (i.e. without authorisation) if the person does not fulfill the conditions of stay in the other Member State.

7 The following 21 EMN Member States provided responses to the Ad-hoc query 2021.77 "Secondary movements of beneficiaries of international protection": Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovakia, Spain, Sweden, The Netherlands. Ad-Hoc Queries are a tool for the EMN National Contact Points and the European Commission use to collect comparative information on asylum and migration matters of relevance to policy development in Member States.

8 CY, DE, ES, FI, PL, SE.

9 BE, FR, FI, LU (discretionary), PT, SE, SK.

10 e.g. BE, CY, DE, EE, ES, FI, FR, LU, PL, SK.

11 e.g. Article 28(1) of the Geneva Convention and para. 11 of the Schedule; e.g. Article 2 EATRR, national legislation.

12 In Belgium, holding a residence permit is not a specific condition but is rather implied in the lawful residence. However, it is explicitly required "that his status as a refugee has been confirmed by the authorities".

13 BE, DE, PL, PT, SE.

14 DE, FI, FR.

15 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003L0109>, last accessed on 17 August 2022.

16 Convention and Protocol related to the status of refugees, 1951, <https://www.unhcr.org/uk/3b66c2aa10>, last accessed on 17 August 2022.

17 European Agreement on Transfer of Responsibility for Refugees (ETS No. 107), 1980, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=107>, last accessed 8 March 2022.

3.1. EU rules regulating mobility and residence of beneficiaries of international protection in another member state

Beneficiaries of international protection may wish to engage in cross-border movements and take up residence in a second Member State. According to Article 25 of the Qualification Directive, the Member States shall issue travel documents to both beneficiaries of refugee status (in the form set out in the Schedule to the Geneva Convention) and subsidiary protection (to those that are unable to obtain a national passport), unless compelling reasons of national security or public order otherwise require.

Under Article 21 of the Schengen Implementing Convention (binding and directly applicable EU law), any third-country national holding a valid residence permit and travel document (including beneficiaries of international protection) has a right to travel within the area without internal border control for a maximum intended stay of 90 days in any 180 day period.¹⁸

This right is subject to the requirement of complying with the conditions of stay which correspond to conditions of entry listed in Article 6(1) of the Schengen Borders Code. These are: holding a valid travel document; holding a residence permit or long-stay visa; justifying the purpose of stay and having sufficient means of subsistence for short term stay and return; not being considered a threat to public policy, internal security, public health or international relation. A stay beyond 90 days is not allowed without a visa or a residence permit. To obtain a residence permit in a second State, beneficiaries of international protection must fulfil the same requirements as other third-country nationals.¹⁹

Member States may check whether these conditions are fulfilled. Those third-country nationals (including beneficiaries of international protection) who do not fulfil the above requirements in a Member State they travelled to, may be refused entry²⁰ and shall be required (under Article 6(2) of the Return Directive) to go back immediately to the Member State in which they obtained the right to stay.

When beneficiaries of international protection meet the requirements for long-term resident status in the EU (i.e. 5 years of continuous residence), they can exercise the corresponding mobility rights and will be covered by the

legal migration acquis.²¹ Beyond these provisions, there are no provisions at EU level concerning the stay and residence of beneficiaries of international protection in a second Member State.

Some Member States have reported an increase of applications for international protection from beneficiaries of international protection already recognised in a first State. Although EU law only provides for short-term mobility of beneficiaries of international protection, it does not prohibit the lodging of a second application. In these cases, where another Member State has already granted international protection, the Member State in which the second application for international protection is lodged may consider it as inadmissible, in line with the Asylum Procedures Directive, or in exceptional circumstances, and as described below, examine the application for international protection.²²

Nonetheless, little data is available on the overall intra-EU mobility of beneficiaries of international protection. Information from 2004 and 2012 shows that due to low case numbers, most Member States do not collect statistics on the number of transfers of responsibility for beneficiaries of international protection under EATRR.²³ Since persons who received an international protection status in a Member State during the period of increased refugee migration in 2015 and 2016 will have fulfilled the five-year residence requirement²⁴ for permanent residence in the EU from 2020 / 2021 onwards, respectively, there might be an increase in the number of transfers of responsibility under EATRR in the future.²⁵ However, some beneficiaries may apply for citizenship after this period rather than transfer of responsibility (depending on the requirements to obtain citizenship in individual Member States).

3.2. Rules governing transfer of responsibility for issuing travel documents

According to the Geneva Convention, when a person who has been granted refugee status “has lawfully taken up residence²⁶ in the territory of another Contracting State”, the responsibility for issuing a new travel document is transferred to the authorities of the second State.²⁷ Since there are no specific criteria (e.g. minimum length of stay, type of stay) laid out in the Geneva Convention, the UNHCR Executive Committee has recommended that States make “appropriate arrangements, including the adoption of bilateral or multilateral

18 In Ireland, which is not part of the Schengen Area, holders of a Convention travel document may not be subject to an Irish visa requirement for short stays of up to 90 days in Ireland if the travel document was issued by a European State which is a contracting party to the European Agreement on the Abolition of Visas for Refugees.

19 European Migration Network, ‘Ad-Hoc Query No. 212 on work, self-employment or studies of refugees and beneficiaries of subsidiary protection in other member states than those that granted the refugee status or subsidiary protection’, 2010, https://home-affairs.ec.europa.eu/system/files/2020-09/212_emn_ad_hoc_query_work_self-employment_and_studies_of_refugees_in_other_ms_30mar2010_wider_diss_en.pdf, last accessed on 17 August 2022.

20 NB: not under Article 14 Schengen Borders Code which is only applicable at external borders, but under national law.

21 European Migration Network, ‘Long-Term Resident Status in the EU. EMN Inform 2020’, 2020, <https://www.emncz.eu/wp-content/uploads/2020/12/274.pdf>, last accessed on 17 August 2022. Another option remains the right to acquire citizenship.

22 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32013L0032>, last accessed 17 August 2022.

23 European Migration Network, ‘Ad-Hoc Query on the Practice of EU Member States being a Party to European Agreement on Transfer of Responsibility for Refugees’, 2012; Lassen, N. M., Egesberg, L., van Selm, J., Tsolakis, E., Doornemik, J. ‘The Transfer of Protection Status in the EU, Against the Background of the Common European Asylum System and the Goal of a Uniform Status, Valid Throughout the Union, for Those Granted Asylum’, 2004, p. 114.

24 In addition, third-country nationals need to fulfil the following conditions: stable and regular resources without the recourse to the social assistance system as well as sickness insurance (Art. 5 Directive 2003/109/EC).

25 Some Member States already offer the national long-term residence status after three years and in most of them third-country nationals can also request citizenship.

26 While Art. 28 uses the term ‘lawfully staying’ the Schedule has retained the term ‘lawfully resident’. The meaning of the two terms is considered to be identical (Vedsted-Hansen, J., ‘Article 28/Schedule’, in *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. A Commentary* (Zimmermann, A./Dörschner, J./Machts, F., eds., 2011), MN 75).

27 Paragraph 11 of the Schedule to the Refugee Convention.

agreements, concerning the transfer of responsibility for the issue of 1951 Convention Travel Documents.²⁸

In this context, the Council of Europe (CoE) adopted the EATRR on 16 October 1980 with the aim of standardising the conditions for the transfer of responsibility for issuing travel documents. The agreement was signed by a total of 17 European states and ratified by 13 states, some with reservations²⁹. Fourteen of the signing States belong to the EU, while 10 EU Member States³⁰ ratified the Treaty. While some Contracting States maintain that the responsibility as laid out in the Geneva Convention

and EATRR³¹ exclusively involves the issuing of travel documents, others grant full protection under the Geneva Convention where the transfer of responsibility for issuing a travel document has been accepted.³² (see section 4.2 below)

It is evident from the above that there are no uniform regulations under EU law on the transfer of responsibility for issuing travel documents for refugees that apply to all States. Furthermore, beneficiaries of subsidiary protection are not covered by the above mentioned legislation.



4. TRANSFER OF RESPONSIBILITY FOR BENEFICIARIES OF INTERNATIONAL PROTECTION

4.1. Applicable legal bases for transfer of responsibility in eu member states

At national level, Member States apply different legal bases, including (i) EATRR, (ii) national legislation and/or (iii) bilateral agreements, for the transfer of responsibility for beneficiaries of international protection. Eight Member States³³ reported that they had no existing legal framework in place concerning such transfer of responsibility and thus, the Geneva Convention was the legal basis for the possible action in this area. Croatia, Latvia, Lithuania, the Netherlands and Slovakia reported that they so far had no experience of transfer cases in practice.

Seven Member States participating in this inform³⁴ reported to have ratified the **European Agreement on Transfer of Responsibility for Refugees** (EATRR). In Italy, the EATRR is applied with reservations related to exceeding validity of the travel document for study purposes (Art. 14(1)) and request for readmission (Art. 14(2)).³⁵ In Sweden, the EATRR normally applies in cases where a third-country national, who is recognised as a refugee in another Member State, applies for a residence permit in Sweden for other reasons than international protection. For example, if a third-country national who has been recognised as a refugee in another Member State is granted a work permit in Sweden, a travel document may be issued after two years on the basis of the EATRR.

National regulations providing specific provisions on the transfer of responsibility for beneficiaries of international protection are in place in six Member States.³⁶ **Belgium's** national legislation goes beyond the EATRR. The transfer of full responsibility (rather than only for

travel documents as per the EATRR) can take place for recognised refugees if (i) the first State is a Contracting Party to the Geneva Convention, provided that the person has resided for 18 months (instead of 2 years as in the EATRR) in Belgium regularly and without interruption, and (ii) the duration of stay has not been limited for a specific reason. In **France**, national regulations provide that an individual who is a recognised refugee in another country must be in possession of a long-stay visa obtained from the French authorities in their usual country of residence before they can claim the transfer of their protection. Obtaining international protection in another EU Member State does not give any right to residence in France, and the applicant first needs to obtain a right to stay in France before applying for a transfer of international protection. As regards the procedure for transferring protection, the High Court³⁷ considered that, in the absence of any applicable legal framework, or special arrangements, a request for transfer of protection to France must be made in accordance with the procedural rules applicable to applications for international protection. In case a third country national granted subsidiary protection in another Member State, the determining authority (OFPRO) assesses the application. Though **Luxembourg** has no specific legal basis and has not ratified the EATRR, a practice allows any beneficiary of subsidiary protection of another Member State who has been legally residing in Luxembourg for several years to obtain a travel document. This is assessed on a case-by-case basis.

Bilateral agreements on transfer of responsibility were reported by four Member States:

- France and Greece concluded an agreement related to transfers of international protection, as part of the relocation scheme from Greece in 2020, which provided

28 UNHCR ExCom, UN Doc. A/33/12/Add.1 (1978), (e).

29 Article 14(1) EATRR allows for reservations regarding both the application of Art. 2(1): that transfer of responsibility will not take place for the reason that the refugee was authorised to stay in the territory for a period exceeding the validity of the travel document solely for the purposes of studies or training – and as regards the application of Article 4(2). Belgium, Italy, Germany, Poland, Romania, Spain and the UK submitted reservations regarding Art. 2(1), while Germany, Italy, Romania, Poland and Spain submitted reservations concerning Art. 4(2).

30 DE, FI, IT, NL, PL, PT, RO, ES, SE, DK.

31 The Explanatory Report of the EATRR states, as regards Article 5, that "it is implicit that following such transfer the second State must grant to the refugee the rights and advantages flowing from the Geneva Convention". See at <https://rm.coe.int/16800c96f1>, last accessed on 17 August 2022.

32 See Footnote 19.

33 CY, CZ, EE, EL, HR, IE, LV, LT.

34 DE, ES, FI, IT, NL, PL, SE.

35 For more information: <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=107&codeNature=2&codePays=ITA>, last accessed on 17 August 2022.

36 BE, DE, ES, FR, NL, SK.

37 Council of State, 2nd-7th United Chambers, 18/06/2018, 415335.

for the transfer to France of 1 000 third-country nationals, including 100 beneficiaries of international protection.

- Luxembourg is bound by the Switzerland-Benelux agreements of 14 May 1964 on the movement of refugees and on the right of return of refugee workers and by the Austria-Benelux agreement of 12 June 1964 on the stay of refugees within the meaning of the 1951 Convention relating to the status of refugees.
- Portugal reported a bilateral agreement with Greece.

4.2. Type of transfer of responsibility

The transfer of responsibility can concern travel documents only, as set out in the Geneva Convention and the EATRR as described above, or the transfer of full responsibility of protection and granting of other rights.

In six Member States³⁸ – primarily those that ratified the EATRR – the transfer of responsibility concerns the issuance of **travel documents for refugees only**. In Spain, this also includes issuance of travel documents for beneficiaries of subsidiary protection. In Austria, although there is no transfer of responsibility for foreigners who have already been granted international protection status in other States, the issuance of a Convention Passport can take place for recognised refugees by another State if they do not possess a valid travel document and have entered the territory legally.

Seven Member States³⁹ offer extended transfer of responsibility to include also granting of other rights. In Belgium, a full transfer of responsibility in terms of refugee status with its respective rights take place. Similarly, in Portugal, all responsibilities are transferred, including issuance of residence and travel documents for refugees and subsidiary protection, housing, access to National Health Service, education and the labour market. With the exception of Belgium, these Member States also offer these rights to beneficiaries of subsidiary protection. In Sweden, when a residence permit with a validity of 12 months or longer is issued, the person is registered as a resident and thus receives benefits that apply for all persons legally residing in Sweden. The person is not automatically granted refugee status but may apply for it and the application is examined in accordance with the Asylum Procedures Directive (2013/32/EU) and the Qualification Directive (2011/95/EU). In France, the OFPRA also provides legal and administrative protection to beneficiaries of international protection (issuance of civil status certificates).

4.3. Criteria used to determine ‘lawful residence/stay’

The main criterion applied by Member States⁴⁰ when processing a transfer request⁴¹ is that the person is

already residing lawfully in accordance with the national legislation and should hold a valid residence permit⁴². This is typically determined by the length of stay and the type of residence permit obtained.

According to Art. 2 of the EATRR, “responsibility shall be considered to be transferred on the expiry of a period of two years of actual and continuous stay in the second State”. The period of two years continuous stay is thus applicable in the Member States that have ratified it. Belgium, which did not ratify the EATRR, applies a period of 18 months.

The type of permit is another criterion applied by some Member States⁴³ to determine the possibility for transfer. The reasons for authorisation of stay are typically based on national legislation, applicable to all third-country nationals. In France, for example, the transfer of international protection is subject to the prior acquisition of a long-stay visa residence permit from the French authorities, or holding long-term EU residence status in another EU Member State under international protection.

Furthermore, Member States require the person to inform the competent authorities and provide evidence that they have a refugee status (and where applicable subsidiary protection) in another State. Portugal, for example, requires a translated document providing the status and grounds for granting a positive decision on application for international protection.

4.4. Readmission of beneficiaries of international protection

Art. 4 of the EATRR regulates the readmission of persons (from the second to the first State) who have received international protection in a first State. However, practices vary across Member States. Some reported that readmission would take place in accordance with bilateral readmission agreements, and in case the residence permit was still valid.⁴⁴ In Austria, for example, if there is no readmission agreement between Austria and the requesting State, there is no readmission obligation, but Austria consents to the transfer of persons who have been granted international protection in Austria and whose status is valid. Similarly, Portugal will accept readmission based on bilateral agreements and a valid residence permit. Germany accepts to readmit a refugee as long as the German travel document is still valid and the responsibility has not been transferred to another State (according to the rules laid down in the Geneva Convention and the EATRR). In the Slovak Republic, the condition is to have a legal residence, and each case is assessed on individual basis.

Four other Member States⁴⁵ readmit persons even when the residence permit is no longer valid. In Luxembourg, for example, a beneficiary of international protection can return to Luxembourg at all times. Even if the residence permit is no longer valid and the beneficiary of

38 CY, DE, ES, FI, PL, SE.

39 BE, FR, FI, LU (discretionary), PT, SE, SK.

40 BE, CY, DE, EE, ES, FI, FR, LU, PL, SK.

41 e.g. Article 28(1) of the Geneva Convention and para. 11 of the Schedule; e.g. Article 2 EATRR, national legislation

42 In Belgium, holding a residence permit is not a specific condition but is rather implied in the lawful residence. However, it is explicitly required “that his status as a refugee has been confirmed by the authorities”.

43 AT, CY, EE, ES, FR, HU, LU, SE.

44 AT, HU, LT, PT, SK.

45 EE, LV, LU, SE.

international protection has left the country, the person is readmitted to Luxembourg since the validity of the residence permit has no influence on the validity of the protection status granted.

The majority of Member States⁴⁶ reported that they did not have any prior experience with disputes with another country regarding readmission. As foreseen in Art. 15 EATRR, disputes between the first and second State shall be settled by direct consultation between the competent authorities. The last step foreseen by Art. 15 EATRR is arbitration. Belgium reported that disputes are resolved on bilateral basis. In Germany, for example, the local foreigner's authority cooperates directly with the responsible authority of the other Member State. If needed, the German Federal Police provides administrative assistance. If it is not possible to reach an agreement, the next step would be a settlement through diplomatic channels. Similarly, other Member States⁴⁷ reported that disputes would be resolved in consultation with the other Member State and according to bilateral agreements, where such exist.

4.5. Challenges regarding the transfer of responsibility for beneficiaries of international protection

The main challenge encountered by Member States⁴⁸ is the lack of uniform legal base regarding the transfer of responsibility, as the EU asylum acquis does not cover the issue, not all Member States have ratified the EATRR, and few bilateral agreements have been put in place. Consequently, the interpretation of the personal scope (e.g. only refugee or also subsidiary protection status), the material scope and the conditions (e.g. starting time of two-year period) differ greatly across the Member States. This can make the process burdensome and bureaucratic as provisions and practices differ across countries.

Some Member States⁴⁹ also reported communication challenges with other countries. Finland, for example, indicated that inquiries made to other Member States about a person's refugee status were not always answered. Cyprus also reported secondary or onward unauthorised movements— they found that the lack of sufficient documentation that to validate the international protection status in other Member States was often a major challenge.



5. APPLICATIONS FOR INTERNATIONAL PROTECTION LODGED IN A SECOND STATE BY BENEFICIARIES OF INTERNATIONAL PROTECTION ALREADY RECOGNISED IN THE FIRST STATE

5.1. Overview of applications for international protection lodged in a second state

For various reasons, beneficiaries of international protection may move on to a second State in order to make a further application for international protection. Asylum applications of beneficiaries who have already been granted international protection by another Member State (first State) may be considered inadmissible, and Member States (i.e. the second state) are thus not required under EU law to examine whether the applicant qualifies for international protection in accordance with the Qualification Directive.⁵⁰

Whilst most Member States were not able to provide statistics, some Member States could provide information on the three main countries of origin of applications for international protection lodged by beneficiaries of international protection who already have been granted protection by another Member State. Please note that the data presented below are incomplete and should be interpreted with caution.

The top nationalities, presented in the table below, differ across Member States that were able to provide this information, but most commonly include Afghanistan, Iraq, Somalia and Syria.

46 CZ, EE, FI, HU, LV, LU, PL, SK.

47 CY, ES, IT, PT, SE.

48 BE, DE, PL, PT, SE.

49 DE, FI, FR.

50 Article 33(1), (2) Asylum Procedures Directive (2013/32/EU).

Table 1: Top nationalities of applications lodged by beneficiaries granted international protection by another Member State (for the period 2018 – 2020)

	Top 1 Nationality	Top 2 Nationality	Top 3 Nationality
Belgium	2020: Syria 2021: Palestine	2020: Palestine 2021: Syria	2020: Afghanistan 2021: Afghanistan
France ⁵¹	2018: Democratic Republic of the Congo 2019: Democratic Republic of the Congo 2020: Eritrea	2018: Angola 2019: other African countries 2020: Guinea (3 agreements)	2018: Central African Republic 2020: Democratic Republic of the Congo
Luxembourg	Iraq	Afghanistan	
Poland (Data for 2018-2020)	Russian Federation	Iraq	Iran/Syria (the same number of applications both for Iran and Syria)
Sweden	Syria	Somalia	Afghanistan

The number of such applications differ across Member State and according to the data provided by six Member States, the applications have been the highest in Belgium and Sweden.

Table 2 : Number of asylum applications lodged by beneficiaries granted international protection by another Member State for the period 2018 to 2020⁵²

	2018	2019	2020
Belgium	N/a	N/a	782
Luxembourg	19 appl. (26 persons)	52 appl. (80 persons)	27 appl. (45 persons)
Poland	2	1	13
Sweden	434	580	389

The three main first states, i.e. where international protection was first granted, are presented in the table below. Greece and Italy were most frequently the first Member State, followed by Bulgaria. This result reflects the framework of the Dublin system, which often requires the first Member State entered to examine the application, and the impact of the main migratory routes since the 2015-2016 migration flows.

Germany has more than 44,000 pending asylum applications regarding beneficiaries of international protection coming from Greece, which reflects an increase of 31,800 cases in 2021. However, this number does not allow any direct conclusions to be made regarding the absolute number of secondary movements from Greece in 2021, as children of beneficiaries of international protection in Greece born in Germany as well as applications filed in previous years are also taken into account.

⁵¹ These data for FR concern positive decisions, data on number of applications lodged are not available.

⁵² France does not collect data on the number of asylum applications lodged by beneficiaries granted international protection in another EU Member State but collects data on inadmissible applications for applicants granted international protection in another EU Member State.

Table 3: Main First states where international protection was granted to third-country nationals who lodged asylum applications in a Second state (2018-2020).

	Top 1 main first state	Top 2 main first state	Top 3 main first state
Belgium*	Greece		
Czech Republic	Greece	Hungary	Bulgaria
Germany*	Greece	Italy	Bulgaria
Luxembourg*	Italy	Greece	Malta
Poland	France	Greece/Bulgaria (the same number of applications both for Greece and Bulgaria)	Greece/Bulgaria (the same number of applications both for Greece and Bulgaria)
Sweden	Greece	Italy	Germany

* Based on observations from relevant authorities and not actual statistics

Luxembourg reported that the situation becomes complicated when a beneficiary of international protection in another Member State files an application for international protection in Luxembourg, and gives birth to a child in Luxembourg during the procedure. Since this newborn is not a beneficiary of international protection in the first country, it is questionable whether the same procedure would be applicable for all family members. Since the EU asylum *acquis* does not give a clear answer, the Luxembourg administrative Tribunal has requested a preliminary ruling from the Court of Justice of the European Union (CJEU) (C-153/21)⁵³ in 2021.

5.2. Examining applications by beneficiaries already recognised by another state

The CEAS is based on the principle of mutual trust, according to which applicants for international protection will be treated in each Member State in compliance with the provisions of the EU Charter of Fundamental Rights, the Geneva Convention and the relevant case-law of the CJEU and European Court of Human Rights (ECtHR).⁵⁴ This basic presumption can, however, be rebutted if the transfer of the applicant for international protection to the first State entails a risk of inhuman or degrading treatment due to the circumstances in that State.⁵⁵

In recent EU case law, the CJEU has also clarified that **applications from already recognised beneficiaries of international protection may not be considered inadmissible** when there is a risk that the applicant, as a person enjoying international protection, would be treated in the first State in a manner incompatible with certain fundamental rights.⁵⁶ Importantly, no one shall be subjected to torture or to inhuman or degrading treatment or punishment.⁵⁷ The Court found that due to the general and absolute nature of Article 4 of the Charter of Fundamental Rights, it is immaterial whether the person would be exposed to a risk of inhuman or degrading treatment at the time of the transfer, during the asylum procedure or after its conclusion.⁵⁸ In accordance with the case-law of the ECtHR, the risk of inhuman or degrading treatment may be direct (risk in the country of transfer) or indirect (if there is a risk linked to the return to a country where the person would face such treatment).⁵⁹ In line with the CJEU's rulings, national courts have in the recent past sometimes overturned inadmissibility decisions of national authorities.⁶⁰ Regarding Germany the majority of such decisions are related to Greece.⁶¹

Notwithstanding the above mentioned cases, as a policy, the majority of Member States either do not examine cases when a status has already been granted in another Member State, or only do so in exceptional circumstances. About half of the Member States⁶² participating in this inform reported that applications for international protection lodged by a beneficiary of international protection of another Member State are considered inadmissible.

53 Please see: <https://curia.europa.eu/juris/liste.jsf?language=nl&jur=C,T,F&num=C-153/21&td=ALL>, last accessed on 17 August 2022.

54 CJEU, Judgment of 19 March 2019, Ibrahim v Germany, ECLI:EU:C:2019:219, para 85.

55 CJEU, Judgment of 21 December 2011, N. S. and Others, ECLI:EU:C:2011:865, para 81.

56 CJEU, Judgment of 13 November 2019, Hamed & Omar v Germany, ECLI:EU:C:2019:964.

57 Article 4 of the Charter of Fundamental Rights of the European Union, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) signed in Rome on 4 November 1950.

58 CJEU, Judgment of 19 March 2019, Ibrahim v Germany, ECLI:EU:C:2019:219, para 87.

59 ECtHR, Admissibility Decision of 7 March 2000, T.I. v. United Kingdom, ECLI:CE:ECHR:2000:0307DEC004384498.

60 Germany: OVG Nordrhein-Westfalen, Judgment of 21 July 2021 – 11 A 2982/20.A.; OVG NRW, 'Pressemitteilung: Aus Italien nach Deutschland weitergereiste Schutzberechtigte oder Asylsuchende ohne Aussicht auf Unterbringung und Arbeit in Italien dürfen nicht rücküberstellt werden', last accessed 15 August 2022. https://www.ovg.nrw.de/behoerde/presse/pressemitteilungen/45_210729/index.php, last accessed 15 August 2022. Belgium: CALL n° 266 695, 14 January 2022, available at: https://www.rvv-ccf.be/sites/default/files/arr/a266695.an_.pdf last accessed 15 August 2022.

61 VGH Baden-Wuerttemberg of 27.01.2022 – A 4 S 2443/21; OVG Berlin-Brandenburg judgement of 23.11.2021 – 3 B 53.19, 3 B 54.19 and 3 B 55.19; OVG Bremen judgement of 16.11.2021 – 1 LB 371/21; OVG Northrhine-Westphalia judgement of 21.01.2021 – 11 A 2982/20.A -, - 11 A 1564/20.A

62 AT, CY, CZ, EE, ES, FI, HU, PT.

Nonetheless, as developed in case law,⁶³ and as reported by some Member States,⁶⁴ such applications are examined in exceptional cases to ensure that the applicant's fundamental rights, as per Art. 4 Charter of Fundamental Rights of the European Union/ Art. 3 of the European Convention of Human Rights, will be secured after the transfer. In cases where Member States do examine an application for international protection by a beneficiary recognised in a first State, they will assess the individual circumstances on its own merits and thus, the outcome of the decision can be different from what was decided by the first Member State. In Belgium, for example, in exceptional circumstances, where the living conditions of the beneficiary of international protection in another Member State expose them to a serious risk of inhuman or degrading treatment as set out in Art. 4 of the Charter, the application for international protection may be declared admissible. It is for the applicant to rebut on an individual basis the presumption that their fundamental rights as a beneficiary of international protection are respected in the EU Member State which granted them such protection. Only when the applicant demonstrates by concrete evidence that the international protection granted to them by another EU Member State is no longer valid and/or would be ineffective, the application for international protection in Belgium will be reviewed in relation to the country of origin. Similarly, in Germany, the Federal Administrative Court is to decide in several pending proceedings (e.g. BVerwG 1 C 26.21, BVerwG 1 C 28.21), where the asylum application of beneficiaries of international protection could not be rejected as inadmissible due to a serious risk of inhuman or degrading treatment according to the CJEU rulings. In these cases, the court took a decision on the merits, namely on the legal question if the outcome of the decision in the first Member State was binding for the decision in the second Member State. The German Federal Administrative court had already ruled earlier that in cases where the asylum application was rejected as inadmissible, the refugee status decision was generally not binding, except concerning the prohibition of return to the country of origin laid down in German aliens law⁶⁵. Some German administrative courts recently decided that the granting of refugee status by one member state – in these cases Greece – is not binding for the own assessment of the asylum application, and that also the prohibition of return laid down in German aliens law is not applicable if the asylum application has been fully rejected in Germany in an assessment on the merits⁶⁶.

In the Netherlands, the application will be processed in the accelerated asylum procedure with no rest and preparation period granted. The applicant has one personal interview in which he or she can explain why they cannot return to the first State where they are already recognised as a beneficiary of international protection. In Spain, for example, such applications are reviewed on

a case-by-case basis, in case of international protection granted by non-EU countries and under the conditions established in the CJEU ruling.⁶⁷

In Sweden, the Swedish Migration Agency has internal guidance for these situations, including references to national jurisprudence. In France, a procedure has been established with the time limit for the investigation set at one month from the submission of the request. During the examination interview, the following elements will be assessed: the effectiveness of the protection afforded by the other Member State: whether protection has been effectively obtained and the capacity of that State to ensure the protection of the third-country national. The third-country national is given the opportunity to submit their observations on the application of the ground of inadmissibility to their personal circumstances.

Some Member States⁶⁸ reported that national courts had examined the return of beneficiaries of international protection to other Member States and the existence of systemic deficiencies in those other Member States, in line with Article 4 of the CFREU and CJEU rulings. For example, in Ireland, national court rulings have allowed returns to other Member States but only following an assessment to ensure there are no systematic deficiencies, in line with fundamental rights considerations and CJEU rulings.⁶⁹ In Sweden, the Swedish Migration Court of Appeal has stated in precedential jurisprudence that international protection may be denied, and that the applicant may be returned to the country of origin or to the first State that has granted the status.

Germany and the Netherlands reported on decisions by national courts which found that the application could not be rejected as inadmissible due to a serious risk of inhuman or degrading treatment according to the CJEU rulings and, therefore, that the return of beneficiaries of international protection to the first state was not allowed, or which ruled that there was a need for a better motivation on why return to the first State was still possible.

In Germany, a number of court cases by higher administrative court level denied returns to Member States because the application could not be rejected as inadmissible due to a serious risk of inhuman or degrading treatment according to the CJEU rulings.⁷⁰ According to these different rulings, persons with international protection status returning to Greece will, with considerable probability, not be able to meet their most basic needs there. They will struggle to earn their living independently for a long period of time, and due to a lack of state and other aid, there is a serious risk that they will find themselves in a situation of extreme material need and, in particular, will not be able to afford decent accommodation or be offered some form of reception. The German Federal Administrative Court decided – in an appeal on points of law in a case related to Hungary – that NGO support has to be taken into account when assessing if

63 CJEU, Judgment of 19 March 2019, Ibrahim v Germany, ECLI:EU:C:2019:219. The CJEU has also ruled that Member States could not declare inadmissible as a 'subsequent application' an application previously examined and rejected in a Dublin-associated country, CJEU, Judgement of 20 May 2021, ECLI:EU:C:2021:404.

64 BE, DE, PL, SK.

65 BVerwG, judgement of 17.06.2014 – 10 C 7.13.

66 VG Stuttgart, judgement of 18.02.2022 – A 7 3174/21; VG Osnabrück, judgement of 14.02.2022 – 5 A 512/20; VG Minden, judgement of 02.03.2022 – 1 K 194/21.A.

67 CJEU, Judgment of 13 November 2019, Germany vs. Hamed and Omar; C540-17 & C541-17.

68 BE, DE, IE, NL.

69 HZ (Iran) v. the International Protection Appeals Tribunal and the Minister for Justice and Equality [2020] IEHC 146.

70 VGH Baden-Wuerttemberg of 27.01.2022 – A 4 S 2443/21; OVG Berlin-Brandenburg judgement of 23.11.2021 – 3 B 53.19, 3 B 54.19 and 3 B 55.19; OVG Bremen judgement of 16.11.2021 – 1 LB 371/21; OVG Northrhine-Westphalia judgement of 21.01.2021 – 11 A 2982/20.A -, - 11 A 1564/20.A.

there is a serious risk of inhuman or degrading treatment in violation of Art. 4 of the Charter⁷¹.

Although the majority of these higher court decisions is related to Greece, one higher administrative court also stated that there would be an assumed violation of Art. 4 of the Charter in case beneficiaries of international protection must return to Italy.⁷² The court specified that persons entitled to international protection who had travelled from Italy to Germany with no prospect of accommodation and work in Italy could not be returned, nor could their application for international protection be rejected as inadmissible, because they faced a serious risk of inhuman and degrading treatment if returned to Italy. This assessment of the situation for returnees in Italy entails an individual assessment and thus decisions on transfers may differ among higher administrative courts.⁷³ Overall, numerous rulings of the German administrative courts, where assumed violation of Art. 4 of the Charter was present, examined individual circumstances of each case.

In the Netherlands, two court decisions⁷⁴ stated that the Minister for Migration did not motivate sufficiently the decision that the beneficiary of international protection could be returned to Greece. The motivation was not considered sufficient due to reports on a changing situation in Greece related to provision of material basic needs. The decisions make it necessary to better motivate why the beneficiary of international protection could return to Greece or to examine the asylum application instead. As a result of the decisions, pending asylum procedures by persons with a protection status in Greece were temporarily put on hold, while the Minister of Migration started a further examination of the situation in Greece.

5.3. Exchange of information amongst member states about beneficiaries already recognised in another country

Most Member States⁷⁵ exchange information and cooperate with other Member States regarding the applications lodged by third-country nationals who are already beneficiaries of international protection in another Member State mostly on a case-by-case basis. Belgium, for example, indicated several channels for such information exchange, including formal and informal bilateral agreements, through national Dublin units and via readmission agreements. France uses the secure messaging system Dublinet with the written consent of the applicant.

A few Member States⁷⁶ mentioned the possibility to use the information registered in Eurodac,⁷⁷ which facilitates the determination of the Member State responsible for the examination of an application for international protection, by storing and processing the digitalised fingerprints of applicants for international protection and persons having crossed the external border irregularly. Information on whether the applicant has already been granted international protection in another Member State can be obtained from the Eurodac system, as each Member State is obliged to indicate the date of when international protection was granted. However, beneficiaries of international protection do not fall within the scope of the Dublin Regulation. The Commission's proposal for an Asylum and Migration Management Regulation⁷⁸ includes the take back procedure, which would also apply to beneficiaries of international protection and therefore data on this category of persons could be used to transfer persons granted refugee status or subsidiary protection status back to the Member State that granted them such protection.

6. FURTHER DEVELOPMENTS

In recent years, the secondary movement of beneficiaries of international protection has been the subject of references to the Court of Justice of the European Union,⁷⁹ and in some Member States the scale of the phenomenon is increasing. The inform examined two situations of secondary movements, namely (i) transfers of responsibility for beneficiaries of international protection and (ii) situations concerning applications for international protection lodged in a second State by beneficiaries of international protection already recognised in the first State.

Given that EU law does not regulate transfer of responsibility for beneficiaries for international protection, there is a certain degree of fragmentation of the legal and policy

frameworks in Member States. This is driven by a number of factors, including, whether or not they have ratified the EATRR and how they interpret the latter; whether, as a policy, they allow for applications from beneficiaries of international protection from other Member States or not; bilateral agreements that they have in place with other Member States; and EU and national case law. Furthermore, some Member States reported an absence of a legal framework concerning transfers of responsibility for beneficiaries of international protection. This fragmentation can negatively impact the situation of beneficiaries of international protection, as there are different regulations and practices at national level. Furthermore, due to a lack of systematic data collection on this specific

71 BVerwG judgement of 07.09.2021 - 1 C 3.21.

72 OVG NRW judgement of 20.07.2021 - 11 A 1674/20.A.

73 OVG Sachsen, judgment of 15.03.2022 -4 A 506/19.A, judgment of 14.03.2022 - 4 A 341/20.A; VGH Baden-Württemberg order of 8.11.2021 -A 4 S 2850/21; OVG Mecklenburg-Vorpommern judgment of 19.01.2022 -4 LB 68/17; OVG Saarland, judgement of 15.02.2022 -2 A 46/21.A.

74 Council of State (ABRvS), 202006295/1/V3 (ECLI:NL:RVS:2021:1627) and 202005934/1/V3 (ECLI:NL:RVS:2021:1626).

75 AT, BE, CY, CZ, DE, EE, EL, FI, FR, IT, NL, PL, PT, SK, SE.

76 CZ, ES, LU, NL.

77 European Asylum Dactyloscopy Database; For more information: <https://www.eulisa.europa.eu/Activities/Large-Scale-It-Systems/Eurodac>, last accessed 15 August 2022.

78 Proposal for a Regulation on asylum and migration management and amending Council Directive (EC) 2003/109/COM(2020) 610 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:610:FIN>, last accessed 15 August 2022.

79 CJEU, Judgment of 19 March 2019, *Ibrahim*, ECLI:EU:C:2019:219; CJEU, Judgment of 13 November 2019, *Hamed & Omar v Germany*, ECLI:EU:C:2019:964.

subject in most Member States, the data available is limited.

Recent legislative proposals from the European Commission have sought to address some aspects related to secondary movements of beneficiaries of international protection. Both the proposals to reform the Common European Asylum System (CEAS), adopted in 2016 by the European Commission, and the Pact on Migration and Asylum in 2020, reaffirmed and strengthened the Commission's commitment to mutual trust through robust governance, implementation and monitoring of the CEAS.⁸⁰ It envisaged actions to improve the planning, preparedness and monitoring of migration flows and movements, at both national and EU level, that could also relate to secondary movements of beneficiaries of international protection.

The proposal for a Qualification Regulation⁸¹ from 2016 aims to address secondary movements of beneficiaries of international protection by clarifying the obligations of a beneficiary to stay in the Member State that granted protection. It provides for additional disincentives through the proposed modification of the Long Term Residents Directive, by restarting the calculation of legal residence required in case the beneficiary is found in another Member States without the right to reside or stay. Article 29 seeks to clarify that a beneficiary can apply to reside in another Member State under other applicable EU rules⁸² or if national rules of the Member States allow it.

The 2020 Pact includes several other proposals to further regulate the secondary movements of beneficiaries of international protection. To limit unauthorised movements and ensure effective solidarity between Member States, as well as to provide the Member States with

the necessary tools to manage transfers of beneficiaries of international protection who entered the territory of another Member State without fulfilling the conditions of stay, the notification procedure set out in the proposed Asylum and Migration Management Regulation would apply. The proposed Eurodac Regulation would include data on the responsible Member State and beneficiaries of international protection, and seeks to facilitate implementation of transfers under the Asylum and Migration Management Regulation. Under the latter Regulation, in cases of migratory pressure, relocation mechanisms would also include beneficiaries of international protection for up to three years from when such persons were granted international protection.

Finally, the EU has in recent years taken a number of initiatives to promote and facilitate intra-EU mobility of EU citizens and third-country nationals alike. For example, the recently adopted Directives (e.g. the EU Blue Card Directive⁸³) and recently proposed ones (e.g. the recast Long-Term Residence Directive⁸⁴) include specific provisions to further facilitate intra-EU mobility, including for beneficiaries of international protection. Under the proposed recast Long Term Residence Directive, beneficiaries of international protection would obtain long-term resident status in the Member State which granted them international protection after three years of legal and continuous residence in that Member State, which would imply that they have a right to facilitated intra-EU mobility. According to the European Commission, for those who are in need of protection, the prospect of obtaining long-term resident status in a shorter period of time would be an important contribution towards facilitating the integration of beneficiaries of international protection.

80 Communication from the Commission on a New Pact on Migration and Asylum, COM(2020) 609 final, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706, last accessed 15 August 2022.

81 Article 29 in the proposal, COM(2016) 466 final.

82 For example as it was proposed in the proposal on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment - COM(2016) 378 final and the version which is in force DIRECTIVE (EU) 2021/1883 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2021

83 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

84 Proposal for a recast of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

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Germany <https://www.bamf.de/EN/Themen/EMN/emn-node.html>

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Norway <https://www.udi.no/en/statistics-and-analysis/european-migration-network---norway>

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Republic of Moldova <http://bma.gov.md/en>