



Unravelling Travelling

Travel documents for beneficiaries of international protection

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Introduction*

Upon granting of international protection, several rights are bestowed on a person fleeing persecution or serious harm. International protection status under European Union (EU) law entails multiple rights, enshrined in Chapter VII of the recast Qualification Directive.¹ These rights include the right to travel documents, which finds its origin in the 1951 Refugee Convention,² the bedrock of the European Union's asylum policy,³ and is transposed in Article 25 of the recast Qualification Directive.

Travel documents have been an integral part of refugee status since the creation of the Nansen Passport in 1922, which served as an identity document granting the holder the right to travel outside the issuing country. An updated booklet-format was created after World War II in the form of the 1946 London Agreement relating to the issue of a travel document to refugees.⁴ This format starkly resembles the currently used 1951 Convention Travel Document.⁵ Article 25 of the recast Qualification Directive requires EU Member States to use the form set out in the Schedule to the Geneva Convention.

The ability to travel to another country is crucial for refugees and subsidiary protection beneficiaries, given that EU law does not in principle allow free movement between Member States as a right attached to international protection. The right of residence granted to international protection beneficiaries is restricted to the country that grants protection. Their only possibility for establishment in another country is access to long-term resident status after 5 years of residence,⁶ or naturalisation in their country of asylum, before they can enjoy a similar set of rights to EU citizens related to free movement and establishment. The right to travel is of particular importance for beneficiaries of international protection who want to take advantage of short-term opportunities for education, training or employment in another State than the one which granted protection, which may be an essential prerequisite for their integration.

This briefing provides an overview of practice in the 20 European countries covered by the Asylum Information Database (AIDA), on the basis of publicly available sources, as well as information provided by civil society organisations in these countries. It will firstly set out the international and European legal framework relating to the obligation to issue travel documents to beneficiaries of international protection. The implementation of these obligations will be examined through an overview of European practice with regard to the conditions for issuing a travel document, the format and duration, as well as geographical restrictions imposed thereon. The briefing also discusses European countries' practice in the receipt and recognition of travel documents issued by another state, as well as the potential for transfer of protection responsibility in accordance with bilateral or multilateral agreements.

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¹ 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.

² Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189; 137, Article 28.

³ 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.

⁴ United Nations Treaty Series, Vol. XI, No. 150.

⁵ Schedule to the Refugee Convention.

⁶ Council Directive 2003/109/EC of the European Parliament and of the Council of 25 November 2003 concerning the status of third-country nationals who are long-term residents ("Long-Term Residence Directive"), *OJ* 2003 L16/44, as amended by Directive 2011/51/EU.

Overview of the legal framework

International law

Article 28 Refugee Convention: travel documents

1. *The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.*

2. *Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.*

Article 28 of the 1951 Refugee Convention contains the obligation for Contracting States to issue travel documents to refugees “for the purpose of travel”. This wording implies that a refugee is not required to justify the country of destination and therefore that the issuing state is in no position to refuse granting travel documents, even if the authorities regard the proposed travel as inappropriate. This reading of Article 28 is supported by the *travaux préparatoires* of the Convention.⁷

The article also provides that the refugee must be “lawfully staying” on the territory of the country that is then obliged to issue Convention Travel Documents. The meaning of this term has given rise to some debate in the past. It has been argued that “lawfully staying” differs from mere presence in the sense that it entails “evidence of permanent, infinite, unrestricted or other residence status, recognition as a refugee, issue of a travel document or grant of a re-entry visa will raise a strong presumption that the refugee should be considered as lawfully staying in the territory of the Contracting State.”⁸

European Union law

Article 25 recast Qualification Directive: Travel document

1. *Member States shall issue to beneficiaries of refugee status travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.*

2. *Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require.*

Article 25 creates different obligations for the two statuses of protection available under EU law: refugee status and subsidiary protection, for those who do not meet the criteria for refugeehood but face serious harm resulting from human rights violations in their country of origin.⁹

⁷ UNHCR, *Note on Travel Documents for Refugees*, 30 August 1978, EC/SCP/10, available at: <https://goo.gl/Lwfvsl>.

⁸ Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd edn (OUP 2007), 527.

⁹ Article 15 recast Qualification Directive.

The recast Qualification Directive only obliges Member States to issue Convention Travel Documents for beneficiaries of refugee status, whereas different types of travel documents can be issued to beneficiaries of subsidiary protection. This differential treatment leaves space for EU Member States to create fragmented legal frameworks limiting the rights of beneficiaries of subsidiary protection. In this context, separate travel documents for subsidiary protection beneficiaries may have a shorter duration or unclear format. Beyond travel documents, limiting rights is liable to diminish the quality of the protection granted, and negatively influences integration into the host state.¹⁰

On 13 July 2016, the European Commission tabled a proposal to replace the Qualification Directive by a Qualification Regulation.¹¹ This proposal forms part of a third phase of harmonisation of the Common European Asylum System (CEAS) which entails a substantial overhaul of the different legislative instruments of the asylum *acquis*. A specific concern raised by the European Commission in its explanatory memorandum to the Proposal for a Qualification Regulation is the lack of harmonisation persisting under the recast Qualification Directive.¹² The memorandum mentions travel documents as one of the elements of the content of protection where there is still a substantial variation in practice between Member States. Further harmonisation is also mentioned as one of the main goals of the proposal.¹³ This has resulted in a revised article on travel documents in the Proposal for a Qualification Regulation.

Article 27 proposed Qualification Regulation: Travel document

- 1. Competent authorities shall issue travel documents to beneficiaries of refugee status, in the form set out in the Schedule to the Geneva Convention and with the minimum security features and biometrics outlined in Council Regulation (EC) No 2252/2004. Those travel documents shall be valid for at least one year.*
- 2. Competent authorities shall issue travel documents with the minimum security features and biometrics outlined in Regulation (EC) No 2252/2004 to beneficiaries of subsidiary protection status who are unable to obtain a national passport. Those documents shall be valid for at least one year.*
- 3. The documents referred to in paragraphs 1 and 2 shall not be issued where compelling reasons of national security or public order so require.*

The implementation of Member States' obligations under the Refugee Convention and EU law with regard to travel documents issued to beneficiaries of protection reveals a highly divergent practice. Practice from non-EU countries is equally illustrative of these trends.

¹⁰ See e.g. France Terre d'Asile, *Asile. La protection subsidiaire en Europe: une mosaïque de droits*, September 2008 (providing a comparative analysis of the rights granted to beneficiaries of subsidiary protection in 5 Member States). A summary of findings can be accessed at: <https://goo.gl/yxHf6d>.

¹¹ European Commission, *Proposal for a Regulation of the European Parliament and of the Council 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (hereafter "proposal for a Qualification Regulation")*, COM(2016) 466, 13 July 2016.

¹² Proposal for a Qualification Regulation, explanatory memorandum, 9.

¹³ Proposal for a Qualification Regulation, explanatory memorandum, 5.

The issuance of travel documents for protection beneficiaries

Conditions for obtaining a travel document

The 1951 Refugee Convention guarantees the issuance of travel documents for refugees. However, by creating a second status of international protection, the EU has left room to impose conditions upon receiving a travel document for beneficiaries of subsidiary protection. Both Article 25 of the recast Qualification Directive and Article 27 of the Proposal for a Qualification Regulation contain a condition for the issuance of travel documents for beneficiaries of subsidiary protection. The articles specify that the subsidiary protection beneficiary needs to be unable to obtain a national passport in order to obtain a travel document. This restrictive provision has been transposed into national legislation by the majority of states covered by AIDA.¹⁴

Beyond the EU, **Switzerland**, which uses a status of temporary admission, has a very restrictive approach in practice, where it is only seldom recognised that the person cannot obtain travel document from his or her home country.¹⁵ In order to prove this, persons with temporary admission are required to meticulously document their efforts to obtain travel documents. As many embassies of countries of origin are reluctant to confirm in writing that they will not issue travel documents, in practice this often results in the inability to travel for persons with temporary admission.¹⁶

In **Turkey**, on the other hand, an automatic right to a travel document is not provided for “conditional refugees” who are subject to Turkey’s geographical limitation on the Convention, or subsidiary protection beneficiaries. These persons may only apply for a “passport with a foreign-nationals-only stamp” (*Yabancılara Mahsus Damgalı Pasaport*), which is issued at the discretion of the Directorate-General for Migration Management (DGMM).¹⁷ To date, no such passports have been issued to international protection beneficiaries, to the knowledge of Refugee Rights Turkey.¹⁸ Similar rules apply to the issuance of travel documents for Syrians under the Temporary Protection Regulation.¹⁹ While the organisation is not aware of cases where such travel documents have been issued, in practice there are cases of temporary protection beneficiaries being allowed to travel on their Syrian passports to third countries, although in some cases they have faced difficulties re-entering Turkey.²⁰

In order to be able to receive Convention Travel Documents, a person needs to be recognised as a refugee by the state issuing the travel documents. In **Sweden**, there is confusion about whether Palestinians under the mandate of the United Nations Relief and Works Agency for Palestine refugees in the Near East (UNRWA), who do not fall within the scope of the 1951 Convention,²¹ may obtain Convention Travel Documents. According to the Swedish Migration Agency, Palestinians would be eligible to receive a travel document described in the 1954 Convention on Statelessness,²² whereas recent case law states that Convention Travel Documents can be issued in certain cases to

¹⁴ Subsidiary protection beneficiaries in **Hungary** receive travel documents regardless of whether they are able to obtain a national passport. In **France** this is only a requirement for “type II” beneficiaries of subsidiary protection i.e. persons who are fleeing serious harm from non-state actors: Information provided by the Hungarian Helsinki Committee, 17 October 2016, and Forum Réfugiés-Cosi, 13 October 2016.

¹⁵ Information provided by the Swiss Refugee Council, 14 October 2016.

¹⁶ *Ibid.*

¹⁷ Article 84(2) Turkish Law on Foreigners and International Protection, referring to Article 14 Turkish Law on Passports.

¹⁸ Information provided by Refugee Rights Turkey, 20 October 2016.

¹⁹ Article 43 Turkish Temporary Protection Regulation.

²⁰ Information provided by Refugee Rights Turkey, 20 October 2016.

²¹ Article 1D Refugee Convention.

²² Information provided by Lisa Hallstedt, 18 October 2016. See also Swedish Migration Agency, *Rättsligt ställningstagande angående de migrationsrättsliga konsekvenserna av Sveriges erkännande av Palestina*, 11/2015, 27 March 2015, available in Swedish at: <http://bit.ly/2e4l9GH>.

Palestinians.²³ In **Germany**, on the other hand, authorities sometimes argue that a Convention Travel Document cannot be issued where the residence status of the person concerned is based on different legal grounds, such as marriage to a German citizen.²⁴

Format and duration

Article 28 of the Refugee Convention refers to the Schedule to the 1951 Refugee Convention (the Schedule) for details on the format of the Convention Travel Document. The Schedule contains specifications i.e. blue colour, type of booklet cover and text, in order to make travel documents as uniform as possible. Both the current recast Qualification Directive and the proposed Qualification Regulation refer to the specific format of Convention Travel Documents for the issuance of travel documents to refugees. When it comes to travel documents for beneficiaries of subsidiary protection, this exact format is not determined in the recast Qualification Directive, leaving room for divergent practices among EU Member States.

The proposed amendment of the travel documents provision in the Qualification Regulation contains two major changes, one relating to the format of the travel documents and one relating to the duration of validity. Further harmonisation in the format of the travel documents to beneficiaries of refugee status and beneficiaries of subsidiary protection is envisaged by including the requirement to comply with minimum security features and biometrics outlined in Council Regulation (EC) No 2252/2004.²⁵

The duration of validity is set out in paragraph 5 of the Schedule and uses a 1 or 2 year time limit at the discretion of the issuing authority. Contrary to the Schedule, Article 25 of the recast Qualification Directive does not provide guidance on the duration of validity of travel documents issued by EU Member States. As a result of this, there is great divergence in the practice of Member States in relation to the duration of validity of travel documents issued to refugees and to beneficiaries of subsidiary protection. Still different rules apply in EU neighbouring countries covered by AIDA. Annex I to this briefing provides an overview of the duration of validity of travel documents applicable in the AIDA countries. The proposed Qualification Regulation lays down a minimum duration of 1 year.

The comparison of national legal 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 8 Member States have established a uniform rule on the duration of validity of travel documents for both refugees and subsidiary protection beneficiaries. These include **Austria, Spain, Greece, the Netherlands, Hungary, Belgium, Italy and Malta**. The other AIDA countries have a shorter duration of validity for travel documents issued to beneficiaries of subsidiary protection than those issued to refugees, thereby limiting the ability to undertake travels enabling a person to take advantage of opportunities for education, training or employment, which hamper integration.²⁶ In the case of **Turkey**, the validity of all travel documents, concerning refugees, conditional refugees, subsidiary protection beneficiaries and temporary protection beneficiaries, is left at the discretion of the DGMM.²⁷

In **Serbia**, the Asylum Act provides that persons granted refugee status shall be issued a travel document, but so far no bylaw on the format and content of the travel document has been issued,

²³ Information provided by Lisa Hallstedt, 18 October 2016. See also Swedish Migration Court of Appeal, MIG 2013:19, Judgment of 26 November 2013.

²⁴ Information provided by Informationsverbund Asyl und Migration, 14 October 2016.

²⁵ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ 2004 L385/1.

²⁶ See e.g. France Terre d' Asile, *Asile. La protection subsidiaire en Europe: une mosaïque de droits*, September 2008 (providing a comparative analysis of the rights granted to beneficiaries of subsidiary protection in 5 Member States). A summary of findings can be accessed at: <https://goo.gl/yxHf6d>.

²⁷ Information provided by Refugee Rights Turkey, 20 October 2016.

thereby creating a legal vacuum. This has resulted in a situation where recognised refugees can only leave Serbia illegally, unless they possess a valid travel document issued by their country of origin. This legal vacuum has been unsuccessfully challenged before national courts by the Belgrade Centre for Human Rights,²⁸ and an application before the European Court of Human Rights is currently being prepared.²⁹

Furthermore, several countries tie the duration of validity of travel documents to the duration of residence permits issued to beneficiaries of international protection, but in various ways.³⁰ Countries such as **Spain, Italy, Cyprus, Bulgaria, Sweden, Germany** and **Malta** have done this for both persons granted refugee status and beneficiaries of subsidiary protection. **Bulgaria**, for instance, has a system where travel documents for both beneficiaries of refugee status and beneficiaries of humanitarian status are linked to their internal refugee identity card or internal identity card with a maximum duration of 5 and 3 years respectively. The **UK** also ties the validity to the length of leave remaining for both refugees and beneficiaries of subsidiary protection, but has capped the duration of validity with a maximum of 10 years for documents issued to refugees and 5 years for documents issued to subsidiary protection beneficiaries.³¹ **Ireland** has opted to tie the duration of validity of travel documents for refugees to the validity of Irish passports, while at the same time tying the validity of travel documents for beneficiaries of subsidiary protection to their permission to remain, with a maximum duration of 10 years.³² Conversely, **Hungary, Greece, Austria, Switzerland, France, Poland,** and **Croatia** do not tie the duration of validity for travel documents to the duration of residence permits. If a beneficiary of international protection in the **Netherlands** possesses a temporary residence permit valid for 5 years, the duration of validity of the travel document will be between 1 and 3 years. Upon receiving a permit for indefinite stay after 5 years, the person concerned will receive travel documents with a duration of validity of 5 years.

The Qualification Regulation proposal adds a uniform minimum duration of validity of the travel document of 1 year for both forms of protection.³³ This considerably short minimum duration may negatively affect beneficiaries requiring a travel document for educational, vocational training or professional purposes beyond such minimum duration of 1 year due to the uncertainty with regard to prolongation or renewal of the travel document. Moreover, as far as renewal procedures are concerned, such short duration will inevitably increase the administrative burden on the issuing authorities.³⁴

Crucially, with the exception of **Hungary** and **Turkey**, all AIDA countries have opted for higher standards than the newly proposed minimum duration of 1 year for refugees. The longest duration of validity in the EU is set by the **UK** and **Ireland**, not bound by the recast Qualification Directive, with travel documents for refugees that remain valid for a maximum of 10 years.³⁵ If adopted, the proposed Qualification Regulation could thus potentially lead to a substantial lowering of standards on the duration of validity of travel documents in the EU. On the other hand, **Sweden** has already diminished the duration of validity of the travel documents issued to both refugees and beneficiaries of subsidiary

²⁸ In Decision UZ 4197/2015, 20 June 2016, the Serbian Constitutional Court dismissed the appeal, stating that a failure to adopt a general legal act cannot be the subject of a constitutional appeal, as opposed to the individual act, as it is prescribed by Article 170 of the Constitution.

²⁹ Information provided by the Belgrade Centre for Human Rights, 20 September 2016.

³⁰ For more information on duration of residence permits see ECRE, *Asylum on the clock? Duration and review of international protection status in Europe*, June 2016, AIDA Legal Briefing No 6, available at: <https://goo.gl/2RCZME>.

³¹ UK Visas & Immigration, *BRP Guidance Notes*, 8, available at: <https://goo.gl/UyH6JU>.

³² Irish Naturalisation and Immigration Service, *Travel Document Information Note*, available at: <https://goo.gl/BQRETi>.

³³ Article 27 of the Qualification Regulation Proposal.

³⁴ UNHCR, *Note on Travel Documents for Refugees*, 30 August 1978, EC/SCP/10, available at: <https://goo.gl/BCqQZ4>.

³⁵ Irish Naturalisation and Immigration Service, *Travel Document Information Note*, <https://goo.gl/BQRETi>. UK Visas & Immigration, *BRP Guidance Notes*, 8, available at: <https://goo.gl/UyH6JU>.

protection: For refugees the duration has been shortened from 5 years to 3, while for subsidiary protection beneficiaries the duration went down from 5 years to 2.³⁶

The only EU Member State applying a lower standard than the recently proposed 1-year duration is **Cyprus**, where, although there is a provision on travel documents for beneficiaries of subsidiary protection, they are currently only provided with a one-page travel document valid for a one journey trip (i.e. *laissez-passer*), which is highly problematic as the vast majority of countries do not accept these, including the Schengen countries.³⁷ **Switzerland** currently also maintains a lower standard for travel documents issued to persons with temporary admission.³⁸ In order to travel outside of Switzerland as a person with temporary admission status, a person needs a return visa and a valid travel document named “passport for a foreign person”. This passport is valid for 10 months but expires immediately upon completion of the journey.³⁹

The differential treatment between refugees and beneficiaries of subsidiary protection as to the exact format of the travel documents is maintained in the proposal, since the form set out in the Schedule to the 1951 Geneva Convention is only required for travel documents for refugees.

Reasons for refusal

Under Article 28 of the 1951 Refugee Convention States may refuse the issuance of a travel document for “compelling reasons of national security or public order”. Contrary to the more common use of “national security or public order”, the term “compelling” was added to assure that only reasons of a very serious character would allow for such refusals.⁴⁰ These grounds for refusal are also incorporated in both Article 25 of the recast Qualification Directive and Article 27 of the proposed Qualification Regulation.

Geographical restrictions

Paragraph 4 of the Schedule to the Refugee Convention specifies that the travel documents must, except in rare cases, be valid for the largest possible amount of countries. Although the provisions of the Qualification Directive and the proposed Qualification Regulation refer to the Schedule, there is no similar provision included therein. With the exception of **Malta, Belgium, Italy** and **Croatia**, all 20 European countries have included a limitation on the geographical scope of the travel documents issued to beneficiaries of international protection.⁴¹ This limitation means that the travel document does not allow travel to the country of origin or country of persecution. This seems to be in line with the aforementioned paragraph 4 of the Schedule to the 1951 Refugee Convention, stating that travel documents should be made valid for the largest possible number of countries, save in special or exceptional cases.

³⁶ As per the temporary law of 20 July 2016, which will be applicable for maximum 3 years. It is unknown at present whether the basic Aliens Act will be reinstated fully or if amendments will be made.

³⁷ The authorities have stated since early 2016 that they are carrying out procurement procedures in order to issue Convention Travel Documents as well as Alien travel documents for beneficiaries of subsidiary protection in line with the requirements of the International Civil Aviation Organisation. The latest update is that these will be in 2017: Information provided by Future Worlds Center, 4 October 2016.

³⁸ Switzerland is not bound by the Qualification Directive and has a national “temporary admission” regime, not subsidiary protection.

³⁹ Articles 4(4) and 13(1)(c) Swiss Ordinance on Travel Documents Issued to Foreign Persons in Switzerland of 14 November 2012, SR 143.5.

⁴⁰ UNHCR, *Note on Travel Documents for Refugees*, 30 August 1978, EC/SCP/10, available at: <https://goo.gl/Lwfvsl>.

⁴¹ In Italy this is forbidden for refugees, but allowed for beneficiaries of subsidiary protection.

This requirement is not laid down in law in **Poland**, however travelling to the country of origin or persecution will in practice lead to revocation of international protection on grounds of cessation.⁴² Laws and regulations in **Germany** do not contain provisions on geographical limitations, so this issue is subject to the discretion of the competent authorities. Guidelines for the Foreigners Authority of Berlin, for instance, indicate that, in line with paragraph 4 of the Schedule, the travel document is valid for the largest possible number of countries.⁴³ In practice, it seems that local authorities throughout Germany have excluded the country of origin from the area of travel. The same goes for **Bulgaria**, where national law does not provide for a geographical limitation, but in practice travel to the country of origin may be considered as a ground for cessation of status.⁴⁴ In **Greece** the geographical limitation is not laid down in law, but it is established administrative practice that the travel documents include a stamp that states 'valid for all countries except the country of origin'. This practice is not established for beneficiaries of subsidiary protection.⁴⁵ **Malta** does not impose a geographical limitation, but beneficiaries of subsidiary protection are issued an Alien's Passport and are bound to ascertain that the document is recognised and valid for travel to the country they intend to visit, as it is not an internationally recognised travel document.⁴⁶ **Sweden** has a system whereby the geographical validity can be restricted to certain countries after an individual assessment by the Migration Agency.⁴⁷

In **Switzerland**, a bill was recently introduced in the political consultation process which aims at restricting the travel rights of recognised refugees. In the case where the State Secretariat for Migration (SEM) suspects that recognised refugees do not respect the prohibition on travelling to their country of origin, the SEM can issue a travel ban to other countries, especially neighbouring countries to that country of origin, applicable to all refugees originating from that country. The Swiss Refugee Council has criticised this proposal but, as the consultation on the proposal was concluded on 13 October 2016,⁴⁸ at the time of writing the bill had not been formally adopted.⁴⁹

Recognition of travel documents and transfer of protection responsibility

Whereas the Refugee Convention and Qualification Directive provide some guidance as to the modalities and conditions of issuing travel documents to a beneficiary of international protection, the treatment and recognition of such documents in countries of travel destination remains less regulated and clear. The European Commission Directorate for Migration and Home Affairs (DG HOME) has published on its website lists of travel documents accepted by different Member States of destination. The DG HOME website contains 3 lists on recognised documents: one on travel documents issued by EU Member States, one on travel documents issued by third states and a final one on travel documents issued by international organisations. These extensive lists published by the European Commission do not seem to alleviate confusion on practices of recognition of documents, as there is no provision as to why certain travel documents may or may not be accepted in Member States. The European Commission's lists illustrate the complex practice surrounding the acceptance of travel documents for refugees and beneficiaries of subsidiary protection.

In practice, several countries refuse to accept travel documents issued by other countries. These include **Croatia** not accepting travel documents for refugees issued by Denmark, Switzerland and

⁴² Information provided by the Helsinki Foundation for Human Rights, 11 October 2016.

⁴³ State of Berlin, *Verfahrenshinweise der Ausländerbehörde Berlin*, 12 September 2016, available at: <https://goo.gl/dCH3qJ>, 492.

⁴⁴ Article 15(1)(5) Bulgarian Law on Asylum and Refugees.

⁴⁵ Information provided by the Greek Council for Refugees, 26 October 2016.

⁴⁶ Information provided by aditus / JRS Malta, following communication with the Passport Office and Civil Registration Directorate, 17 October 2016.

⁴⁷ Information provided by FARR, 16 October 2016.

⁴⁸ SEM, *Anpassung des Ausländergesetzes (AuG): Verfahrensnormen und Informationssysteme*, available at: <https://goo.gl/f1vMEH>. For a statement from the Swiss Refugee Council, see: <https://goo.gl/nLdbZL>.

⁴⁹ Information provided by the Swiss Refugee Council, 14 October 2016.

Liechtenstein,⁵⁰ and **Hungary** not accepting travel documents for Palestinians issued by Syria.⁵¹ As for the travel documents issued by another country and recognised in **Belgium**, the Aliens Office refers to the travel documents lists on the DG HOME website.⁵² This practice is also applied in **Sweden**.⁵³ In **Bulgaria**, problems have arisen where the issuing country has failed to upload information either about the issuance of the travel document or its prolongation in the respective EU lists compiled by DG HOME. These situations have resulted in temporary detention or non-admittance of beneficiaries to Bulgarian territory.⁵⁴

Beyond the acceptance of travel documents, the mobility of protection beneficiaries between countries raises the issue of potential transfers of responsibility for issuing a new travel document, or undertaking protection obligations. The Schedule to the 1951 Refugee Convention contains a provision on the transfer of responsibility for the issuance of Convention Travel Documents. Paragraph 11 provides that a shift in responsibility takes place once a refugee has lawfully taken up residence in another Contracting State. Even though the Convention does not provide guidance on the exact moment of the transfer of responsibility for protection, other instruments have determined 2 or 3 years of residence as the moment in time where responsibility may shift. These other instruments include bilateral or multilateral agreements,⁵⁵ such as the 1980 Council of Europe Agreement for Transfer of Responsibility for Refugees.⁵⁶

The Council of Europe Agreement was put in place in order to facilitate the application of Article 28 of the Refugee Convention and the relevant paragraphs in its Schedule.⁵⁷ The Agreement is currently signed and ratified by 13 European countries,⁵⁸ of which **Spain, Italy, Sweden, the Netherlands and Poland** are covered in this legal briefing. **Belgium, Luxembourg, Greece** and the **Czech Republic** have also signed the Agreement but failed to ratify it. **Switzerland** is also a party to the Agreement, whereas the **UK** withdrew its policy resulting from the obligations arising from the Agreement in 2013.⁵⁹ The signatory Member States have voiced their disappointment in stating that not all EU Member States are a party to this Agreement.⁶⁰

Article 2 of the 1980 Council of Europe Agreement states that refugee status

“[S]hall be considered to be transferred on the expiry of a period of two years of actual and continuous stay in the second State with the agreement of its authorities or earlier if the second

⁵⁰ Information provided by the Croatian Law Centre, 29 September 2016.

⁵¹ Red Cross EU & ECRE, *Disrupted Flight: The realities of separated refugee families in the EU*, 2014, available at: <https://goo.gl/ZjKcMM>, 17.

⁵² The lists can be found at: <https://goo.gl/rnVpDI>.

⁵³ Information provided by Lisa Hallstedt, 18 October 2016.

⁵⁴ Information provided by the Bulgarian Helsinki Committee, 20 October 2016.

⁵⁵ Agreement concerning the residence of refugees between Austria and the Benelux countries of 11 April 1960; Agreement between the Benelux countries and Switzerland concerning the right of return of refugee workers of 14 May 1954; Agreement on the movement of refugees between France and Switzerland of 12 April 1960; Final Protocol to the Agreement between the Federal Republic of Germany and Switzerland concerning the abolition of visas for refugees of 4 May 1962; Agreement between Austria and France concerning the residence of refugees according to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees of 21 October 1974.

⁵⁶ Council of Europe Agreement on Transfer of Responsibility for Refugees, available at: <https://goo.gl/5rFq3Q>. For more information on the Council of Europe Agreement on Transfer of Responsibility for Refugees and mutual recognition of positive asylum decisions see ECRE, *Discussion paper: Mutual recognition of positive asylum decisions and the transfer of international protection status within the EU*, November 2014, available at: <https://goo.gl/JOnmgS>.

⁵⁷ *Ibid.*

⁵⁸ Denmark, Finland, Germany, Italy, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom, Switzerland and Norway.

⁵⁹ See also UK Home Office, *Transfer of refugee status – interim notice*, available at: <https://goo.gl/0uikXI>.

⁶⁰ Nina Lassen, Leise Egesberg, Joanne van Selm, Eleni Tsolakis, Jeroen Doornik, *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*, DG.JAI/A2/2003/001, 2004, 113.

State has permitted the refugee to remain in its territory either on a permanent basis or for a period exceeding the validity of the Travel Document.”

However, there are divergences in the application of this Agreement due to a different interpretation of the obligation arising from Article 2 across Europe. Some states argue that the shift in responsibility only entails a shift in the responsible party to issue a travel document, whereas others believe that the transfer shifts full responsibility to the second Contracting State.⁶¹ The latter interpretation is supported by the *travaux préparatoires* of the Agreement and Article 5 of the Explanatory Report which specifies that “although this article concerns the transfer of responsibility for the issuing of a travel document, it is implicit that following such transfer the second State must grant to the refugee the rights and advantages flowing from the Geneva Convention.”.

In **Switzerland** for example, the rules of the Agreement are transposed in Article 50 of the Asylum Act. The period of 2 years of legal stay is interpreted restrictively by Swiss courts, since 2 years of stay as an asylum seeker is not taken into account for the threshold of 2 years of legal stay required to trigger transfer of responsibility.⁶² Switzerland also examines if any exclusion grounds apply,⁶³ and has the possibility to grant temporary admission instead of refugee status, thereby *de facto* reviewing the international protection status of the person concerned. When the Council of Europe Agreement is not applicable, Switzerland does not automatically become responsible, as Article 50 of the Asylum Act provides that Switzerland can grant asylum and therefore does not contain an obligation to automatically do so. Some authorities in **Germany** also argue that in order to issue travel documents for refugees, their status has to be confirmed.⁶⁴ Upon request by the local authorities the Federal Office for Migration and Refugees (BAMF) then has to examine whether a formal procedure for withdrawal or revocation of the refugee status may be initiated. According to information obtained by civil society organisations, there is no consistent policy of authorities in these cases and some authorities may also issue travel documents without requiring a confirmation of the refugee status, thereby leading to a complex structure without legal certainty.⁶⁵

Interestingly, the notion of transfer of responsibility is included in legal instruments beyond the Council of Europe agreement. Some degree of transfer of responsibility is implied in the Long-Term Residence Directive. Article 12(3a) of the Long-Term Residence Directive provides that a Member State seeking to expel a long-term resident from its territory must obtain confirmation from the Member State issuing the long-term resident permit that the individual no longer has international protection needs. However, a derogation is possible where the second Member State deems that it may expel the person to a third country where *non-refoulement* is not applicable.⁶⁶ This assessment inevitably raises questions around the individual’s protection needs, to be examined by a country other than that which offered protection.

Beyond the 1980 Council of Europe Agreement, certain countries have bilateral or multilateral agreements in place. **France, Austria, Switzerland, Belgium** and the **Netherlands** have all concluded separate agreements on the transfer of refugee status, as seen below. **Malta** is not a party to the Council of Europe Agreement, nor does it have bilateral or multilateral agreements on this issue,⁶⁷ but it does

⁶¹ Council of Europe, *Report on the second meeting of the Ad Hoc Committee on Legal Aspects of Territorial Asylum and Refugees*, Strasbourg, 30 September 1977 (EXP/AT.Ré (77) 5), paragraph 5; *Report of the fifth meeting of the Ad Hoc Committee on Legal Aspects of Territorial Asylum and Refugees*, Strasbourg, 28 March 1979 (CAHAR (79) 7), II.

⁶² See e.g. Swiss Federal Administrative Court, Judgment D-5660/2013, 21 January 2015, 5.1, available at: <https://goo.gl/9eP1qJ>.

⁶³ Article 53 and 54 Swiss Asylum Act.

⁶⁴ See e.g. State of Berlin, *Verfahrenshinweise der Ausländerbehörde Berlin*, 12 September 2016, available at: <https://goo.gl/dCH3qJ>, 324.

⁶⁵ Information provided by Informationsverbund Asyl und Migration, 14 October 2016.

⁶⁶ Article 12(3c) Long-Term Residence Directive.

⁶⁷ Information provided by aditus foundation / JRS Malta, following communication with the Maltese Ministry for Foreign Affairs, 17 October 2016.

have a provision in the Passport Regulations that allows for the issuance of passports to Commonwealth citizens.⁶⁸ Relevant bilateral or multilateral agreements between European countries are listed below:

Bilateral and multilateral agreements on transfer of responsibility	
<i>State Parties</i>	<i>International agreement</i>
AT, BE, NL, LU	Agreement concerning the residence of refugees between Austria and the Benelux countries of 11 April 1960
BE, NL, LU, CH	Agreement between the Benelux countries and Switzerland concerning the right of return of refugee workers of 14 May 1954
FR, CH	Agreement on the movement of refugees between France and Switzerland of 12 April 1960
DE, CH	Final Protocol to the Agreement between the Federal Republic of Germany and Switzerland concerning the abolition of visas for refugees of 4 May 1962
FR, AT	Agreement between Austria and France concerning the residence of refugees according to the 1951 Convention of 21 October 1974

Conclusion

Even though the right to travel is equally guaranteed in international and European law, refugees and beneficiaries of subsidiary protection in different places of Europe receive widely different treatment as to the content and exercise of their right to travel. The enormous divergence in the duration of validity of travel documents between countries, as well as differential treatment between refugees and subsidiary protection beneficiaries, creates a complex legal framework that not only undermines legal certainty but in many cases highly restricts the rights granted to beneficiaries of subsidiary protection.

In an attempt to harmonise the practice of EU Member States in the context of the proposed Qualification Regulation, the European Commission has regrettably tabled a surprisingly low minimum standard compared to current state practice. The one-year minimum validity for travel documents could potentially lead to a ‘race to the bottom’, thereby negatively influencing integration in the host state. Given the unduly heavy burden imposed on the beneficiary of international protection and the intensive administrative resources involved for issuing authorities, a longer duration of validity seems appropriate.

Other legal arrangements have been created concerning the recognition of travel documents issued by other countries and the transfer of responsibility for refugees, which have given rise to confusion in multiple countries and in some instances even detention of refugees. ECRE has previously called for a comprehensive framework on the transfer of protection status within the EU,⁶⁹ and the overview of recent practice across European countries illustrates the need for relaunching this debate.

⁶⁸ Maltese Passport Regulations, Subsidiary Legislation 61.02, September 1993, Reg.2, available at: <https://goo.gl/4N6ZJW>.

⁶⁹ ECRE, *Discussion paper: Mutual recognition of positive asylum decisions and the transfer of international protection status within the EU*, November 2014, 6.

Annex I: Duration of validity of travel documents for beneficiaries of international protection

Country	Legal basis	Duration of travel document (in years)	
		Refugee status	Subsidiary protection
<i>EU minimum (Commission proposal)</i>		●	●
Austria	Article 90(1) Aliens Police Act	●●●●●	●●●●●
Belgium	Article 57 (3)-(4) Consular Code	●●	●●
Bulgaria	Article 59(1) Law on Identity Documents	●●●●●	●●●
Cyprus	Article 21 Refugee Law	●●●	-
Germany	Section 1III, 4I and 5I Ordinance on Residence	●●●	●
Spain	Article 36(d) Asylum Law	●●●●●	●●●●●
France	Article L753-4 Ceseda	●●●●●	●
Greece	Article 8 JMD 10566/2014	●●●●●	●●●●●
Croatia	Article 75 LITP	●●●●●	●●
Hungary	Asylum Act	●	●
Ireland ⁷⁰	Article 4 Refugee Act	●●●●●●●●●●	●●●
Italy	Article 24 LD 251/2007	●●●●●	●●●●●
Malta		●●●	●●●
Netherlands	Article 11 Passport Decree	●●●●●	●●●●●
Poland	Article 89(i) Law on Protection; Articles 252-253 Law on Foreigners	●●	●
Sweden	Temporary Aliens Act amend.	●●●	●●
UK	8 BRP Guidance Notes	●●●●●●●●●●	●●●●●
Switzerland	Article 13 (1)(a) and (c) Ordinance on the Issuance of Travel Documents	●●●●●	-
Serbia	N/A	-	-
Turkey	Article 18 Law on Passports	-	-

All categories in **Turkey** and beneficiaries of subsidiary protection in **Cyprus** are issued travel documents valid for one journey. In **Switzerland**, the passport issued to temporary admission beneficiaries is valid for 10 months and expires at the end of the conducted journey. In **Serbia**, no bylaw has been adopted on the modalities of travel documents to date.

⁷⁰ This will be replaced by Article 55 of the International Protection Act 2015, yet to be commenced.