

Final Report
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Study on

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

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This study has been carried out by the Danish Refugee Council, the Migration Policy Institute and the Institute for Migration and Ethnic Studies on behalf of the European Commission (Directorate General for Justice and Home Affairs). The opinions expressed by the authors do not necessarily reflect the position of the European Commission.

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Executive Summary

1. Background for the study

In its November 2000 Communication "*Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum*", the European Commission suggested that the question of transfers of protection between Member States should be studied. The Commission foresaw a need to develop a mechanism whereby refugees, who would effectively be long-term residents, would be entitled, under clear conditions, to mobility for residence and employment throughout the Member States. Such a mechanism might involve the replacement of the existing mechanisms for transferring responsibility established by the European Agreement on Transfer of Responsibility for Refugees and through bilateral agreements between Member States.

This study on transfer of protection status in the EU was called for by the Commission in spring 2003 "for the purposes of identifying conditions for drawing up EC instruments, which would include rules on transfer of protection status between EU Member States." The present system, which is based on provisions set out by the 1951 Convention relating to the Status of Refugees, and its Schedule, the Council of Europe Agreement from 1980 on Transfer of Responsibility and a small number of bilateral agreements, seemed far from satisfactory. The study was launched in order to examine the scope of the problem and to propose long-term solutions. The study is part of the process of achieving the long term goal of the Common European Asylum System (CEAS) and echoes the call of the Treaty establishing the European Community as amended by the Treaty of Amsterdam for measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

During the period in which research for this study has been conducted, the Council adopted a *Directive concerning the status of third-country nationals who are long-term residents*. This directive establishes that people coming from a non-EU Member State, who have legally resided in a Member State for five years and can show they have adequate resources and sickness insurance will be granted a long-term residence status which allows them freedom of movement for residence purposes among the Member States. Long-Term Resident Third Country Nationals have equal rights to Member State nationals in a broad range of areas, including employment and at least core welfare benefits. Refugees - and persons with subsidiary or temporary protection - were specifically excluded from this directive on Long-Term Resident status, because Member States felt that there was a need for further thinking on the issue of 'transfer of protection status'. This study forms part of that further thinking.

The report comprises three parts. The first part is on the International Legal Framework relevant to transfer of protection status. The second part looks at the types of systems related to transfer of protection currently existing in the different Member States. This covers the full range of their agreements, practices, criteria and scope, as well as procedures. Part 2 further describes, through country reports and analysis, the state of play regarding the implementation of the European Agreement in EU Member States. In

addition, an assessment of transfers of protection from the perspective of refugees and persons with subsidiary protection is provided. The third part presents a description of future scenarios for transfer of protection, proposing different models for tackling transfers of protection between EU Member States. These models should, according to the Terms of Reference, take into consideration the gradual establishment of the CEAS including a uniform status. The models should include better mechanisms for transfers of protection of refugee status; transfer of protection applied to subsidiary forms of protection and the feasibility of the disappearance of formal systems of transfers of protection; in other words, can the link between residence and protection be disconnected or enhanced.

2. *What is transfer of protection status?*

In principle, all Contracting States to the 1951 Convention relating to the Status of Refugees have a responsibility to uphold all the rights set out for all refugees, in line with the relevant specifications contained in the Convention, regardless of which State determined their status. Some refugees take up lawful residence in a Contracting State other than the one that determined their status. For them the question of transfer of protection status and its implications are highly relevant. Some states maintain that the responsibility transferred under the 1951 Convention and the European Agreement on Transfer of Responsibility for Refugees involves only the responsibility for issuing Travel Documents in accordance with Article 28 of the 1951 Convention. Other states extend full protection rights under the 1951 Convention once transfer has been accepted. These states see the issuing of Travel Documents as only one element of their obligations under the 1951 Convention and, if parties, of the European Agreement.

The 1951 Convention effectively responds to the question of which protection obligations are involved in the change of State-Refugee relationship when a refugee moves from one Contracting State to another. In addition to prohibition against *refoulement*, which is the corner stone of protection, the protection obligations of Contracting States include a catalogue of minimum standards of treatment applicable to refugees lawfully or unlawfully in the territory of Contracting States. An analysis of the standards of protection obligations and criteria of entitlements to treatment shows that transfer of protection obligations under the 1951 Convention starts at the point when the refugee takes up lawful residence in a second state. Rather than initialising transfer, the transfer of responsibility for issuing Travel Documents under the relevant provisions of the Schedule to the 1951 Convention, is in fact the final point in a process of transfer of substantial protection responsibilities from the first state to the second state. This final transfer of responsibility for issuing travels documents confirms the lasting nature of the refugee's change of residence.

The preparatory works of the European Agreement provide support to the understanding that the scope of responsibility to be transferred under the provisions of the 1951 Convention (and of the European Agreement) encompasses full protection of the refugee including all the rights and advantages flowing from the 1951 Convention, and not merely the issuing of Travel Documents.

3. Who accepts transfer of responsibility for refugees?

In the context of this study we have examined the policy and practice of sixteen EU Member States (**Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, the Slovak Republic, Spain, Sweden and the United Kingdom**) and one non-Member State (**Switzerland**). This is described in detail in Part 2 of the report. With the exception of one Member State (**Greece**), all acknowledge some degree of obligation to accept transfer of responsibility for refugees who move from one contracting State to another and gain lawful residence there. They have all ratified the 1951 Convention. One Member State (**Finland**) on ratification made a reservation to Article 28 of the Convention and is therefore not under any legal obligation to apply the provisions of the Convention relevant to transfer. Nine (**Denmark, Finland, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom**) of the 16 Member States as well as the non-Member State (**Switzerland**) covered by this study have ratified the European Agreement on Transfer of Responsibility for Refugees, three States (**Belgium, Greece and Luxembourg**) signed but never ratified the Agreement. None had any clear reasons for non-ratification.

Most of the States covered by this study seem to attach relatively little importance to the field of transfer of protection status. State parties to the European Agreement have generally elaborated clearer standards and procedures for transfer, and, it seems, also more consistent practices on implementation – at least with regard to transfers from other State parties to the Agreement - than have States, which are not parties to the European Agreement. With a few distinct exceptions, clarity as to the actual application in all particulars is however lacking in most states - whether they be parties to the European Agreement or not - due to the absence of detailed guidelines. The general lack of in-depth knowledge of the concrete caseload, which prevails in most States, whether they are parties to the European Agreement or not, makes it difficult to draw precise conclusions on the question of nature and degree of implementation.

4. Level of transfers

With one exception (**Belgium**), States do not keep or release official statistics on transfer of protection cases. Based on mainly rough estimates provided by the state officials it is however clear that the total number of formal transfers is small and generally does not exceed 25 accepted transfers a year per country. In most States the reported number is much lower and four States (**Portugal, Greece, Ireland and the Slovak Republic**) had seen no cases in the last five years.

On the basis of the information received from the states surveyed and the small numbers of refugees identified who have transferred their protection status from one European country to another (or had the desire to do so), it seems likely that the actual number of transfers taking place annually, relative to the total number of refugees who find protection in Europe, is small. This, however, does not necessarily mean that the demand for transfer would not be larger if movement between Member States were made easier

and information as to the possibilities for transfer was more widely available. Refugees interviewed seemed to have little knowledge about the possibilities to transfer protection, and, where there was some measure of knowledge it was often incomplete or inaccurate.

5. Who seeks to transfer?

With few exceptions, the formal transfers that take place, are - perhaps as a result of immigration policies - linked to a previously obtained residence permit issued on the basis of family ties to the second country.

Based on the information received from the refugees interviewed for this study, it seems that the most common motives refugees have for seeking settlement in another country and transfer of status are employment, study and family reunification/formation. In general terms, they pursue the fulfilment of life's potential rather than following the call of "passive" pull factors such as better welfare provisions.

6. Criteria for transfer in practice

Transfer of protection status is in all States limited to *Convention refugees*, while persons with *subsidiary protection* do not benefit. Lack of harmonization, the assumption of a very diverse application of subsidiary forms of protection across the Member States and the assumed temporary nature of the need for subsidiary protection were reasons given by those interviewed for not extending rights of transfer to those categories.

The sixteen of the seventeen States covered by this study that apply policies of transfer all operate with a main criteria implying that transfer should normally only take place after up to two years of lawful stay or residence in the second country for reasons unrelated to the refugee's need for protection. Stays for specific short-term purposes such as studies and training normally do not count. Regardless of length of stay in the second State, expiry of the travel documents issued by the first country of protection or the obtaining of permanent residence in the second State normally leads Member States to accept transfer of responsibility. These criteria would in principle normally satisfy the requirements of the European Agreement, but most often not the criteria of the 1951 Convention. Furthermore, the notion of residence or stay in the meaning of the 1951 Convention and the European Agreement are not consistently interpreted and applied throughout Member States - a situation which adds to the unclear picture of State practice within this field.

7. Extraterritorial effect of the determination of refugee status

Ten Member States (**Belgium, France, Finland, Germany, Italy, the Netherlands, the Slovak Republic, Spain, Sweden and the United Kingdom**) and the non-Member State (**Switzerland**) included in this study, state that, in accordance with the UNHCR Executive Committee Conclusion No 12 (XXXIX) – 1978 on "extraterritorial effect of the determination of refugee status", they apply extraterritorial effect to refugee status determined by the previous country of protection in cases of transfer of responsibility for

the issuance of travel documents. This is being done automatically unless there are concrete indications of serious reasons to believe that cessation or exclusion clauses may be applicable. One of state (**Spain**) nevertheless wants to know something about the grounds for granting refugee status in the first state before accepting transfer of responsibility. Another state (**Luxembourg**) would in principle not apply extraterritorial effect to refugee status determination in another country, but seems nevertheless to do so in practice in those cases. Two other states (**Ireland** and **Portugal**) are not able to clarify their positions in this regard as they have not yet had any cases of transfer. Two states (**Austria** and **Denmark**) do not consider themselves under an obligation to automatically accept another Contracting State's refugee status determination and would not give it any effect beyond the issuance of a Convention Travel Document. **Greece** has no policy on transfer of responsibility, but will in practice protect persons recognized as refugees by other States against *refoulement*.

8. Does the transfer of responsibility for the issuance of a Convention Travel Document in fact imply transfer of all main protection obligations under the 1951 Convention?

The majority of states studied - twelve (**Belgium, France, Finland, Germany, Italy, Luxembourg, the Netherlands, Portugal, the Slovak Republic, Spain, Switzerland** and **the United Kingdom**) out of seventeen - consider acceptance of transfer responsibility for the issuance of Convention Travel Document to imply their acceptance of an obligation to extend to that refugee full protection, including all rights and advantages flowing from the 1951 Convention. Two States (**Ireland** and **Sweden**) have not clarified their position in this regard. Two States (**Austria** and **Denmark**) consider their obligations pursuant to transfer of responsibility to be limited to responsibility for the issuance of travel documents. **Greece** has no policy on transfer and does in practice not extend full protection (beyond protection against *refoulement*) on basis of recognition of refugee status made by another state.

9. Main questions for EU policy makers

Do or should refugees have a right to move between Member States and reside in Member States other than the one in which were been determined to be a refugee?

There are really two fundamental questions involved for EU policymakers in addressing the issue of transfer of responsibility for refugees or persons in need of subsidiary protection between Member States of the European Union. The question posed above conveys a *proactive* granting by EU Member States of a right for those recognized as refugees to move as freely around the Union as citizens and other legally resident third country nationals. In essence, this is a question of *how* refugees could move – a facilitation of their mobility at some or any point in the future after the granting of refugee status. A second way of addressing the transfer of responsibility issue would be more *reactive* in nature. The answers to the transfer question posed in this reactive way pertain to refugees granted status in any country of the world, so long as their status is granted according to, and by a Contracting State of, the 1951 Convention. This question could be posed with or without a European Union, and receive the same answer. That

answer is based on the legal obligation to transfer responsibility for issuing travel documents contained in the 1951 Convention. The European Agreement facilitates implementation of the transfer for the states that have ratified it.

There is a very basic and fundamental difference between these two questions. The first question implies the conferring of a right onto anyone recognised as a refugee by a Member State of the European Union as part of the process of European integration, the development of a frontier free Europe, and the creation of an Area of Freedom, Security and Justice. It implies that Member States have it in their power to decide on the scope of the movement and residence rights of these people, just as they have it in their power to confer European Union citizenship on the nationals of all Member States and to include in that the right to reside, work and study anywhere in the European Union, or the power to grant long-term resident third country nationals the right to move. Member States shape and develop the criteria, creating a benefit, which will potentially enhance the lives of the populations of the Member States and deepen the European integration process at the level of the individual. An added benefit of this free movement for residence and employment is that, theoretically, people needing work will move to where jobs are available. This has the potential to become increasingly important in the light of demographic developments and their economic consequences in European welfare states.

10. The Future Scenarios

In thinking about the future scenarios or models for the transfer of protection in the European Union we seek to respond to the two questions set out above. This means we look both at the reactive need to deal with the situation of refugees (and persons with subsidiary protection) who take up lawful residence in a second Member State, and at the potential for a proactive desire on the part of Member States to open mechanisms for mobility for refugees and protected persons who are long-term residents of the European Union. Six scenarios are set out:

- A. The refugee becomes an asylum seeker again in the second state
- B. The refugee is recognized as such without new procedures (as set out in the 1951 Convention)
- C. The refugee is dealt with in the same way as long-term resident third country nationals (whether LTR status is granted or not)
- D. The refugee is treated in the same way as EU nationals even if the refugee has not naturalized, and so does not have citizenship of a Member State (ie similar to the directive on free movement for EU citizens)
- E. The refugee's treatment in the second Member State is dependent on the reason for movement, and not on the protection claim.
- F. A new system is created for refugees to move and reside in the whole EU, as part of the Common European Asylum System

All of the scenarios include suggestions related to the type of legal instrument that might be necessarily, and consideration of their administrative impact.

Scenario A envisages a situation in which a person simply applies once more for asylum in the second Member State. This scenario will be impossible for those granted refugee status when the Procedures Directive enters into force, and is anyway, in the light of the legal obligations of the 1951 Convention, purely theoretical. However, for persons with subsidiary protection, this scenario is presumed to be possible, as indeed it was described in the European Commission staff Working Paper evaluating the Dublin Convention. Our analysis suggests this is in fact a rather inefficient model for Member States to pursue.

Scenario B effectively describes the current situation of transfers (those we are describing as 'reactive' transfers). This is the minimum system that should occur, and could be achieved either through a Community instrument, or through all EU Member States ratifying and implementing the European Agreement.

Scenarios C, D and F are linked in several ways, so will be dealt with together here, following scenario E.

Scenario E, under which the treatment of the refugee in the second Member State could be dependent on the reason for movement and not on the need for protection alone, suggests that the timing of the transfer of protection could be linked to the reason for the secondary migration eg dependent on the closeness of ties to one Member State or another which that secondary migration displays. This would be a complex system, and potentially open to charges of discrimination.

Scenarios C and D suggest treating refugees in the same way as either Long-Term Resident Third Country Nationals or as EU citizens. As is shown in comparative tables of the rights that refugees, LTRs and EU citizens have according to existing instruments, there is not a significant difference. The two areas of difference lie in the issuing state of the travel document (the country of origin for LTRs and an EU Member State for citizens and refugees) and access to welfare benefits and entitlements (which is more open for refugees, and limited for mobile LTRs and citizens who must not become a burden on the Member State in which they reside).

Scenario F offers two options for systems allowing mobility for refugees and persons with subsidiary protection. The first option suggests that free movement would be an automatic entitlement to all persons granted protection in the Member States, under conditions similar to those which hold for the movement of EU citizens, including the non-burdening of the welfare system. This would thus be similar to scenario D, and would involve either a new directive or a modification of the Qualification Directive. The difference in scenario F would be the explicit nature of the treatment of the protected persons as equivalent to EU citizens. Status as such would still be the responsibility of the state that determined status, with all Member States collectively responsible for all refugees in the EU, and travel documents indicating that they are issued on behalf of all Member States.

The second option under Scenario F would involve establishing criteria for mobility (eg two or three years of residence and a certain level of resources), and allowing protected persons who move once they fulfil these criteria access to welfare systems as set out in the 1951 Convention. Before the criteria were met, refugees who would move might see their access limited to core benefits in states other than the one that determined status. Refugees and protected persons would, under this suggested system, be able to choose whether or not to request travel document renewal in the second state – they could keep their protection attachment to the first Member State. This scenario could involve amendments to the Qualification Directive, or the Long-Term Resident Directive, or a new instrument. It would be somewhat comparable to Scenario C.

11. Conclusions

One of our major conclusions is that the “transfer” only *ends* with symbolic issuance of Travel Document: that is not where it starts. It starts with the refugee taking up lawful residence in the second state. A second key Conclusion is that at present, the number of refugees lawfully taking up residence in a second state *and* requesting and receiving a transfer of their status symbolised by the issuance of a new travel document in the second state is quite small. While many states expressed satisfaction with the European Agreement, an EU approach to transfer of protection would clearly bring benefits to the Member States as they develop a Common European Asylum System.

It seems clear that refugees will, for various reasons, move between Member States. They may not do so very often, however. They seem most likely to do so for similar reasons to those EU citizens might have for moving: study, employment and personal or emotional reasons. A system which facilitated such secondary movements, both so that states could know who is moving, why, when and where, and so that people with protection might integrate into EU society at large, would seem to be a useful goal.

We conclude that a system which facilitated and regulated secondary movements between Member States would be useful in helping to ensure that all Member States react to refugees’ movement by upholding their international obligations, and it could also be productive and conducive to the sense of belonging to craft appropriate rules to proactively allow refugees to take up freedom of movement in the EU.

Introduction

As the internal borders of the European Union have come down, movement for residence, including employment, self-employment, study and family unity and formation, has arisen as an issue on the EU agenda. Such movement has, to date, been dealt with for different categories of people who have the right to reside in one EU Member State, and for whom residence rights might be extended by the other Member States. Citizens of Member States – particularly when they became simultaneously European Union Citizens in the 1992 Treaty of European Union, were the first such group. Third country nationals who are legally long-term residents in Member States are the second such group, since the decision on a directive in 2003. The rights which both of these groups have on taking up residence in a second Member State and their situation in relation to all Member States is set out in the report below.

A third group whose situation vis à vis movement around the Member States' territory as a whole is being considered are refugees. Refugees, determined¹ to have such status through the application of the 1951 Convention relating to the Status of Refugees (the 1951 Convention) have a set of rights, many of which are comparable to those of nationals of the state in which they have been granted protection or to legally resident third country nationals. For EU Member States, the question has arisen as to whether or not refugees have or should have a right to move between Member States and reside in Member States other than the one in which they were determined to be a refugee. Posing the question in this way suggests considering refugees as fundamentally similar in status to either citizens of an EU Member State or long term resident third country nationals. However, it is not that straightforward.

Perhaps the major reason for which granting such a right of free movement to refugees is not so straightforward is that a person with refugee status has become the responsibility of, and is protected by, a state other than their country of citizenship, origin or previous habitual residence from which they have had to flee. So, if a refugee moves from one Member State to another, the question of which state is actually responsible for that refugee arises. What is more, whereas an immigrant or lawfully resident third country national who has not requested asylum in the host state is admitted in accordance with national immigration law, the admission of asylum seekers and recognition of refugees by national authorities is governed and constrained by international legal obligations. The migrant is an immigrant (or legal resident) according to the national authorities of the country in which she is lawfully residing. A refugee is a refugee everywhere (in principle, according to extra-territoriality as discussed below) once his status has been determined. The immigrant relies on the country of citizenship for protection. The refugee relies on a country agreeing to protect him. That is in most cases the country in which his status was

¹ Determination in accordance with **Council Directive 2004/83/EC of 29.4.2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection** (not yet published in the OJ), further referred to as: Qualification Directive.

determined and where he lives. The issue at hand in this study is the question of which state protects a refugee who moves away from the state that determined his status.

In order to grasp some of the implications of this subject it is useful at this very early stage in the report to think about the real situation for real people – and for the Member States. Consider the following (fictitious) typical cases of refugees who found protection in one European country but aspire(d) to settle in a second EU Member State. These cases lie at the ends of a continuum between instances where transfer of a refugee's status takes place according to the procedures agreed upon between states and to the satisfaction of the person(s) concerned (as a reaction to their secondary movement), and situations where transfer does not become an issue because secondary refugee movement does not actually take place. In these latter cases, a proactive granting of a right to free movement by governments might be said to make the refugee's life easier – or at least a life which feels like it is in their own individual control – and the integration of the refugee in society might be facilitated. The situations (fictitious, but drawn from generalizations among the refugees interviewed for this study) are:

- 1) A refugee has been granted Convention status in one EU Member State. She spends a period studying in another EU Member State, during which time she falls in love with a fellow student. This other student is a national or otherwise long-term legal resident of that second EU Member State. These two students decide that they want to live together, ideally in the second Member State, where they met. They marry (or form a legal contract of living together) and the refugee on that basis is granted a regular residence permit. After about two years, her habitual place of residence is clearly the second Member State, where she enjoys the companionship of her partner. By this time her Travel Document has expired. This two year period coincides with the period agreed between those states which are party to the European Agreement on the Transfer of Responsibility for Refugees (Council of Europe:1980) after which the new country of lawful residence will gain responsibility for the refugee, and, accordingly, the authorities of the second Member State issue her a new Convention Travel Document, and guarantee her protection.
- 2) A second refugee finds protection in a well-developed welfare state of the EU. In his new society his integration seems to be taken care of in a well-organised manner. Housing is available, social security and other benefits guarantee a modest but secure living standard, he has been able to reunite with his family who have followed him to the Member State in which he is now living. His children can go to school. The one thing the refugee finds missing in his life is the opportunity for self-fulfilment through further study or (self)employment. He had completed an education in his country of origin and has several years of work experience. The authorities of his country of protection, however, do not recognise his diplomas because its educational system is structured very differently. Worse still, for the man in question, he does not speak the language of this country, but knows another EU language well, since one of the Member States has strong historical ties to his country of origin – and it is likely that his qualifications would be better recognized or convertible in a country where this language was spoken. This refugee would much prefer to seek his future and

settle in such a county, where he firmly believes his life, and that of his family, would be easier. He is confident he could, in due course, find employment there, or start his own business. He might approach the authorities of a second EU Member State and inquire about the possibilities for moving there on the strength of his refugee status. The answer in all likelihood would be negative. He is not told that if he did move and take up lawful residence, responsibility for him as a refugee would be transferred in due course to that country.

On the continuum between these two cases, we could find many less clear-cut ones. Refugees are in a position in which they feel (often accurately) that they can only move to a second country in an irregular manner – which they might not want to risk doing. They might also think they should repeat their application for asylum, even if they move regularly to the second state. The subject of the second example above may find himself biding his time in his country of asylum, until he has become eligible to naturalize, and become not only a citizen of the first EU Member State but an EU citizen, with the right to move freely to live in another EU Member State of his choice. The years waiting to naturalize are probably not spent as fruitfully as they might have been if the refugee had been allowed or managed to move earlier. In actual fact, the country of settlement might invest heavily in the refugee's integration, e.g. by having him participate in an introductory (language) programme. If the refugee, upon naturalization, uses his freedom of movement as an EU citizen to move to his desired country of destination after all, such investments have been lost for all concerned. Still, ultimately, after potentially wasted years, the refugee might be able to fulfil his goals for a fruitful life.

In this Introduction we will set out the fundamental questions concerning how and why refugees might move around the Union, to which Member States must find responses. These questions, relating to whether Member States need a *reactive* response on the situation of people who are refugees and move for family or employment related reasons, and/or a *proactive* position on the freedom of movement for refugees as for other legally resident individuals in the integrating, frontier-free EU, permeate the rest of this report.

We then turn to a background assessment of what is meant by the term transfer of responsibility, in theory, and in practice. This section of the Introduction sets the scene for the thorough country reports presented in Part 2 of this report.

A further element of background information relates this issue of transfer of protection to the EU process, including the workings of the Dublin regulation determining the Member State responsible for processing an asylum request.

Following this background information, we explain, drawing on the terms of reference established by the European Commission in 2003, the reasons for which this study has been conducted, and the methodology employed. Finally in this Introduction, we set out the plan for the rest of the report.

1. The Fundamental Questions: proactive and reactive

There are really two fundamental questions involved in addressing the issue of a transfer of responsibility for a refugee between Member States of the European Union. The question posed in the opening paragraphs was: Do or should refugees have a right to move between Member States and reside in Member States other than the one in which they have been determined to be a refugee? This question would suggest a pro-active ‘granting’ of a right to the people involved. It could more directly be phrased as follows:

1. If a person is granted refugee status in one Member State, should that confer on them, in an integrating European Union, the right to reside, work, and/or draw rely on public assistance and social security benefits in all of the Member States? Should they be able to travel freely between the Member States for the purpose of residence?

In essence, this is a question of *how* refugees could move – a facilitation of their movement at some or any point in the future after the granting of refugee status. This phrasing of the issue conveys a *proactive* granting by EU Member States of a right for those recognized as refugees to move as freely around the Union as citizens and other legally resident third country nationals. It therefore carries implications for the EU which is harmonising and/or integrating policy in many fields.

A second way of addressing the transfer of responsibility issue would be more *reactive* in nature. The answers to the transfer question posed in this reactive way pertain to refugees granted status in any country of the world, so long as their status is granted according to, and by a Contracting State of, the 1951 Convention. This question could be posed with or without a European Union. The most fundamental question about the transfer of responsibility in this reactive sense would be formulated as follows:

2. If a person has moved from one (Member) State to another, and is residing lawfully in the second (Member) State, e.g. as a worker, or a family member of a legal resident, and, in need of a new or renewed Travel Document, they present themselves to the authorities of the second (Member) State saying – I have a previous Travel Document from the first State, where I was recognized as a refugee – how does the second State have to respond? Does the response involve accepting responsibility for the protection of the individual as a refugee?

There is a very basic and fundamental difference between these two questions. The first question implies the conferring of a right onto anyone recognised as a refugee by a Member State of the European Union as part of the process of European integration, the development of a frontier free Europe, and the creation of an Area of Freedom, Security and Justice. It implies that Member States have it in their power to decide on the scope of the movement and residence rights of these people, just as they have it in their power to confer European Union citizenship on the nationals of all Member States and to include in that the right to reside, work and study anywhere in the European Union, or the power

to grant long-term resident third country nationals the right to move. Member States shape and develop the criteria, creating a benefit, which will potentially enhance the lives of the populations of the Member States and deepen the European integration process at the level of the individual. An added benefit of this free movement for residence and employment is that, theoretically, people needing work will move to where jobs are available. This has the potential to become increasingly important in the light of demographic developments and their economic consequences in European welfare states.

The second question, however, is not about conferring a right which will be attached uniquely to the status of refugee as granted and determined by one of the European Union Member States. It is rather about the fundamental rights of people determined to be refugees under the Convention. It is not about a general right to move and reside freely and at the individual's will, but about an individual right, having lawfully taken up residence in a state, to achieve the protection of that state if the individual as a refugee does not have the protection of a state of nationality or, if stateless, of habitual residence, and has been determined to have the status of refugee by any other 1951 Convention Contracting State's authority.

It is much easier to find a straightforward response to the second question than to the first. The answer to the reactive approach to refugees who move and reside lawfully in a second state lies in existing international legal agreements. This is the situation that will be sketched out in detail in the country reports below, and in Part 1, which deals with the international and regional legal framework. In essence, the road to transfer of responsibility as a reaction to the lawful residence of a person who is a refugee in a state other than the one that granted that status is open. It is possible, and a fact, under international and regional legal instruments and state practice. The fact that such a reactive transfer of responsibility for refugees happens and can – or should - happen is little known. However, as will be apparent from the country reports below, in actual fact this transfer of responsibility is well used in the relatively small number of known cases where refugees lawfully residing in a second state approach that state's authorities with a request for renewal of travel documents. While it is an open possibility, the proactive granting of a right to freedom of movement is closed. It is not a right which exists for refugees in the EU: in fact, it was explicitly removed from the initial proposal for a directive on long-term resident status which gave a right to movement for employment and residence to other legally resident third country nationals.

The answer to that second, reactive question, noted above, does, however, impact the response to the first, proactive question, not least because it constrains the Member States in the arrangements they can make about the general freedom of movement for people granted refugee status in one of the Member States. It also establishes the circumstances under which a transfer of responsibility should currently take place.

2. Transfer of Responsibility

Even if the second question set out above (on the status of a refugee who takes up lawful residence in a second Contracting State of the 1951 Convention) is relatively easier to answer on the basis of existing international legal agreements, the response is not totally clear. In particular, there is a lack of full consensus between the states involved, about the meaning of “lawful stay” or “residence”. These concepts are essential to the transfer of responsibility. Perhaps as important, there is no complete agreement on the exact nature of the ‘responsibility’ being transferred. While this issue forms the major substance of Parts 1 and 2, below, by way of background information at the start of this report it is important to note in outline two possible answers:

1. **Simply responsibility for issuing a Travel Document.** At first sight ‘simple’ this responsibility is not so obvious since any state issuing a Travel Document of any sort in essence demonstrates at least a connection to the individual carrying, and identified in, the document, and at most, responsibility for protecting that individual against any human rights violations any where in the world. The issuing state is also the place to which an individual would be returned if expelled from another state. The Contracting States to the 1951 Convention should, according to the Convention, Schedule and interpretation under Executive Committee (ExCom) notes and conclusions, extend Travel Documents for refugees lawfully residing in their territory, regardless of which Contracting State originally determined the individual’s status as a refugee. How this works, or does not work, in practice will be discussed at length in Parts 1 and 2 below.
2. **Responsibility for upholding all the rights of a refugee set out in the Convention.** All Contracting States to the 1951 Convention have a responsibility to uphold all the rights set out for all refugees, in line with the relevant specifications contained in the Convention, whichever state determined their status. States may not have given explicit consideration to their position in this regard, as the number of refugees taking up lawful residence in a second state and requesting a transfer of protection status has apparently been and could be expected to be quite small. However, if the EU Member States wish to ensure that refugees, like other lawful and long-term residents of those Member States have the right to freedom of movement, residence and employment in the whole EU territory, this issue may become more important to them. This second response to the question of the content of responsibility includes **responsibility for the protection, including welfare in the fullest meaning of that term, of the refugee.** In today’s political climate, where refugees are often referred to as net recipients of welfare, States are apparently concerned about any measure which would mean more refugees (ie by implication more welfare recipients) would live in their territory. A first point to be made in this context is that protection is about much more than access to welfare assistance – and also, according to many interpretations, quite distinct from the provision of welfare benefits. Protection could be understood to be primarily concerned with legal status and

political protection of an individual by a single state's authorities, wherever the individual is in the world. Furthermore, the notion of a transfer of responsibility as currently construed, is dependent on the *prior* movement of the refugee to a second state for purposes that fall within that state's regular permission for granting lawful residence regardless of refugeehood. No states currently grant lawful residence to an individual in order to allow them to claim welfare benefits. Rather, such lawful residence status is usually granted for the purpose of employment, family unity, study or training.

In the light of these possible answers to the question of what 'responsibility' (and 'transfer') entails, we seek to use the terms with care. We normally use "transfer of responsibility", "transfer of responsibility for protection" and "transfer of protection", all of which refer to the responsibility for upholding the right and entitlements of a refugee set out in the Convention. When referring exclusively to "transfer of responsibility for the issuance of a Travel Document", we will normally spell this out. Occasionally, however, the context might legitimate the use of the shorter "transfer of responsibility" without implying transfer of full protection. We try to use 'transfer of protection status' when we are only discussing the status of the person, which is particularly relevant when discussing the possible extraterritorial effect of refugee status determinations. It is a mark of the complexity of the subject matter, however, that these distinctions are not always entirely clear in state practice or in international regulations. For this reason, there is more thorough discussion of the overlaps and distinctions below, as well as reference to the confusion in this terminology and its implications during the country reports in Part 2.

3. Background: Why is or might transfer of responsibility or protection status be an issue in the EU? (Relation to Dublin, Long-term resident third country national directive and other relevant instruments)

In an EU without inter-Member State frontiers, all residents of the Member States are potentially going to see the need or benefit of spending some time, or all their time, in a Member State other than the one in which they initially reside. When citizens of a Member State move to another Member State, they remain the responsibility of their country of citizenship. Third Country Nationals with Long-term Residence Status and the right to move, likewise, remain the responsibility of their country of citizenship. If a person has been granted refugee status, their country of citizenship (if they had one) is, by definition, not responsible for them. A refugee is the responsibility of another state. A major question – and the reason for which the transfer of responsibility is an issue for the EU – is: Which state is responsible? Is it the state that determines refugee status? Is it the state in which the refugee resides? Is it the state that issues the refugee's Travel Document? All of these questions will be broached in Part 1. First, however, it is worth putting those questions into the EU context.

The issue of where a refugee 'should' be has been most prominent in the EU in the asylum-seeking phase. The Dublin Convention and later Regulation have sought to

determine which state is responsible for assessing an asylum claim. Effectively, the transfer of responsibility after status determination could be seen as another level of decision-making about which state is responsible for a refugee. Nonetheless, the criteria used to make this determination may well be at odds with those of the Dublin system. Under Dublin, states seek to transfer the asylum seeker to the place where the states think he should be in order for his status to be determined. Transfer of post-determination protection sees, in the context of the reactive question we set out above, the refugee move, and the state reacts by taking over responsibility for her. How does the issue of transfer of responsibility or protection status fit in the broader EU context?

In its November 2000 Communication, the European Commission discussed a range of asylum and refugee protection issues which would be elements in arriving at a Common European Asylum System. These included the need to have broadly similar rules and conditions in all Member States so that secondary movements would not be “influenced solely by the diversity of applicable rules”.² In that Communication the Commission was quite clear in its message that the purpose of “the common procedure and uniform status is not to organise the recognition of Geneva-Convention refugee status or subsidiary protection by means of individual positive or negative decisions taken by a Community body.”³ The option of a Community body making individual status decisions would be incompatible with the principles of proportionality and subsidiarity, the Commission said. This has implications for the issue of the transfer of responsibility for refugees, as those refugees who seek to move will inevitably have the protection of an individual state prior to that movement, and a status determined by an individual state.

Also in its 2000 Communication the Commission was concerned with the issue of solidarity. This concern emerged primarily on the level of “asylum shopping”: the focus being on the asylum seeking stage in a refugee’s relationship with one or more Member States and not on the post-determination stage. Likewise, discussion of secondary movements was focused on the pre-status determination phase.

In setting out plans for the asylum-seeking phase, the Commission insisted, “An applicant for protection must be able to be reasonably certain that, whichever Member State he approaches, he will enjoy equivalent chances of obtaining proper protection.”⁴ The Commission did foresee the need to allow refugees, who would effectively be long-term residents, to travel through the Union, and to settle in another Member State. It suggested, “The conditions should be equivalent to those imposed on European Union citizens (conditions as to resources or employment might be imposed).” It also noted that

Questions concerning transfers of protection between Member States or cessation of protection will have to be studied in this context, as will mechanisms for the provision of information and the transmission of

² **Communication from the Commission to the Council and the European Parliament Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum** COM/2000/0755 final, Brussels, November 2000. Para 1.2.

³ **Ibid.**, para 1.3

⁴ **Ibid.**, para 3.1.

documentation built up during the examination of the refugee's request if he changes his place of residence. In the context of a uniform status valid throughout the Union, there are legitimate questions about the need for the continued existence of all the mechanisms for transferring responsibility established by the European Agreement on Transfer of Responsibility for Refugees or by bilateral agreements between Member States.

3.1 The Dublin Context

The issues of transfer and of responsibility arise in the Dublin Regulation context. Although their implication and application in that context is quite different from what would or could exist in a post-determination transfer of responsibility context, there is a need to reflect on the linkages between these phases so that continuity could be exercised.

The preamble to the **Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application** states:⁵

The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty establishing the European Community and the establishment of Community policies regarding the conditions of entry and stay of third country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.

The spirit of solidarity mentioned implies a sharing by Member States of the responsibility to examine asylum applications according to any previous and recent relationship they have directly with the applicant (eg through the granting of a visa or residence permit). Other criteria include any relationship in the form of family ties an asylum seeker has with someone already in their territory as well as the responsibility states take on by virtue of being the Member State that admits the asylum applicant to the territory of the European Union as a whole.

While the Dublin Convention and later Regulation refer to asylum seekers, and not those people determined to be in need of protection who might move later, there is some overlap with the subject of this study. A person determined to be a refugee might, after all, choose to move to another Member State after their status determination because, for example, they are forming a family relationship with someone who is residing in that other Member State as a citizen, long-term resident third country national or refugee. They might have had good reasons not covered by the Dublin criteria for choosing a particular state, and thus after being granted refugee status seek to move to the state of

⁵ Council Regulation (EC) No 343/2003 of 18 February 2003 **establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national** Preamble paragraph 8.

their choice, lawfully, and have their status transferred. Does the refugee who is moving need to request asylum again after moving? Do they always gain residence rights on the basis of family formation? Even if they gain residence rights for family formation purposes, which passport should they use for travel purposes, or for their visa or any necessary permit to be inserted into? Does the current system mean people have to apply for asylum in the “wrong” state?

3.2 The Long-term Resident Context

At this point, background information is also necessary on the reasons for which Member States have agreed on the long-term residence status of third country nationals, which allows them to move to a second Member State to reside. This is important because one of the other core issues in the discussion of the transfer of protection status is that of lawful residence.

Council Directive 2003/109/EC of 25 November 2003 **Concerning the status of third-country nationals who are long-term residents**⁶ establishes that people coming from a non-EU Member State, who have legally resided in a Member State for five years,⁷ can show they have adequate resources and show they have sickness insurance will be granted a long-term residence status which allows them freedom of movement for residence purposes among the Member States. Long-term resident third country nationals have equal rights to Member State nationals in a broad range of areas, including employment and at least core welfare benefits.

Refugees were specifically excluded from this directive on long-term resident status, because Member States felt that there was a need for further thinking on the issue of ‘transfer of protection status’. This study forms part of that further thinking.

One of the key ways in which refugees differ from other third country nationals who might reside for a long period of time in an EU Member State is in the matter of the issuance of a Travel Document or passport. A third country national who is not a refugee will remain able to claim protection and assistance of the country of citizenship until he might decide to apply for, and be successful in that application for, naturalization as a citizen of the country (EU Member State) in which he has resided for the required time period. A refugee, however, by definition is unable or unwilling to call on the protection of their country of citizenship or habitual residence. A refugee is not expected to travel on, or use a passport from a country origin as a means of identification – because the authorities that issue such a document are part of those authorities of which the refugee is fearful, or which cannot protect the refugee. For this reason, the 1951 Convention established the Convention Travel Document, a successor to the Nansen Passport for

⁶ Council Directive 2003/109/EC of 25 November 2003 **Concerning the status of third-country nationals who are long-term residents**, OJ L 16 of 23.1.2004

⁷ The Directive does not apply to refugees, people with subsidiary protection or temporary protection, people with residence permits for study or training, au pairs, seasonal workers, or diplomats (Article 3).

refugees under the League of Nations mandate in the 1920s and 1930s. The Convention Travel Document is *initially* issued by the state that determines refugee status.

4. Explanation of study, reasons for undertaking it, methodology

The Terms of Reference set out by the European Commission in requesting this study suggested that while “uniform status, valid throughout the Union, for those granted asylum, may be established along various options, as highlighted in the European Commission’s communication COM(2000)755 final of November 2000, ... whatever the format and pace of harmonisation, a clear, transparent, fair and efficient system for ensuring effectiveness and continuity of protection will be needed.” The Commission launched this study as part of the process of achieving the long-term goal of creating the Common European Asylum System (CEAS) and of preparing EC instruments to regulate this issue at EU level. The intention was to examine the scope of the problem and to propose solutions in the long term.

One of the objectives set out at Tampere⁸ was the approximation of the rights granted to foreign residents with those of EU citizens, implying new measures for third country nationals, including refugees, for establishing residence in another Member State. The Commission noted, in its Terms of Reference for this study, that while third country nationals normally enjoy consular protection of their country of origin, refugees do not enjoy such protection but are placed under the protection of the state that recognized them as such or of the state where they have lawfully taken up residence. Thus, according to the Commission, the question arises under which conditions and through which mechanisms the responsibility of affording the protection and rights linked to refugee or protection status falls (e.g. the administrative assistance mentioned in Article 25 or the issuance of the Travel Documents provided in Article 28 of the 1951 Geneva Convention).

The Commission noted that the status of the person concerned also has to be managed (e.g. terminating refugee status if and when a cessation clause under Article 1C of the Geneva Convention applies) when there is the formal shift from the first state of protection to the state where the refugee has established its new residence. The present system is, according to the Commission’s Terms of Reference for this study, far from satisfactory and the only multilateral agreement dealing with this issue in the EU (the Council of Europe European Agreement) has not been signed or ratified by all EU Member States. Member States party to this Agreement do not seem entirely satisfied with its functioning. Some Member States have concluded bilateral agreements.

⁸ The Tampere European Council meeting of October 1999 focused on asylum and immigration issues. The Heads of State and Government issued clear and comprehensive Conclusions at the end of their meeting, setting out a work programme on these issues which had a deadline of 1 May 2004 (according to the Amsterdam Treaty timetable).

The Commission intended for this study to identify conditions for drawing up EC instruments that would include rules on transfer of protection status between EU Member States.

The Terms of Reference mandated two parts to the study. In consultation with the Commission, there are in fact three parts to the final report. The first part, an addition from the perspective of the Terms of Reference, is on the International Legal Framework. This was to have been part of the country report section, which now forms the major substance of Part 2.

The second part looks at the types of systems related to transfer of protection currently existing in the different Member States. This covers the full range of their agreements, practices, criteria and scope, as well as procedures. Part 2 further describes, through country reports and analysis, the state of play regarding the implementation of the European Agreement in EU Member States. In addition, an assessment of transfers of protection from the perspective of persons under protection is set out, as mandated by the Commission.

The third part was intended by the Commission to present a description of future scenarios for transfer of protection, proposing different models for tackling transfers of protection between EU Member States. These models should take into consideration the gradual establishment of the CEAS including a uniform status. The models should include better mechanisms for transfers of protection of refugee status; transfer of protection applied to subsidiary forms of protection and the feasibility of the disappearance of formal systems of transfers of protection; in other words, can the link between residence and protection be disconnected or enhanced.

In obtaining the information for the second part of the study, a questionnaire and interview methodology was employed. Interviews were conducted with authorities in Austria, Belgium, Denmark, France, Germany, the Netherlands, the Slovak Republic (at the time a candidate country), Spain, Sweden, Switzerland (a non-Member State) and the United Kingdom. These interviews were based on the questionnaire attached as Appendix One. In addition, questionnaires were sent to the authorities in those Member States that could not be visited. The information supplied in response to those questionnaires and interviews has been used, and was followed up on where necessary. Draft country reports were shared with the interviewees and any comments considered and adjustments included in the final versions.

Research visits were also conducted at UNHCR Headquarters in Geneva and the Council of Europe, where interviews were held with the relevant officials. Additional information and documentation relating to the interpretation of the 1951 Convention relating to the Status of Refugees and the European Agreement on Transfer of Responsibility for Refugees was also gathered during these visits. During the country visits, additional interviews were conducted with local UNHCR officials wherever possible. Further meetings were held with ECRE, and national refugee NGOs have frequently been contacted in the course of information gathering.

Interviews were also conducted with refugees in nine countries.⁹ A four-pronged strategy was developed to identify refugees who had experience of a transfer of protection from a first country of resettlement to a second one, or who at one stage or another had contemplated moving and requesting such a transfer.

1. Refugee protection agencies, like national refugee councils or UNHCR offices, as well as relevant government ministries were approached.
2. We contacted fellow research institutes in other EU Member States (assuming that those researchers who study processes of immigration and integration might know candidates for an interview or were well placed to point out others who might).
3. We sought contacts with a broad range of NGO's (e.g. immigrant self-help organizations or state sponsored immigrant councils).
4. Wherever the Danish Refugee Council study team member spoke with government representatives it inquired about possible contacts (either refugees or individuals/organizations who work with refugees) for the Institute for Migration and Ethnic Studies team.

In some instances, these strategies were successful; in others we encountered considerable problems. All in all we have investigated 39 cases. In a number of instances these turned out have no bearing on the exercise at hand. Yet, also in those instances an interview was conducted (albeit sometimes of a brief nature) which did add to the general overview of the refugee experience in Europe. Only in six cases refugees actually a) moved to another Member State, and b) requested for transfer of protection.

In general, finding refugees with relevant experiences was difficult. In a number of states, privacy regulations made it difficult for the authorities to put the researchers in contact with refugees seeking transfer of their protection. This, however, is only part of a much broader problem. In Switzerland, for instance, the authorities sent out letters to all refugees who had settled, during the past five years, in the German speaking part of their country, asking for their cooperation. None of these refugees was willing to assist. In other countries, the unofficial statistics or numbers offered by the authorities did not appear to be based on an actual collection or review of relevant cases. In the end, most interviews took place where people could be approached in a face-to-face situation or through the mediation of trusted third parties.

There could, however, be various other explanations for the difficulties encountered in finding people in the situation under study:

1. Not many people in fact want to move after determination of their status;
2. People are interested in moving but they do not know that they can do so, and they do not even try – or because it seems so difficult to them, they give up;

⁹ Austria, Denmark France, Germany, Italy, the Netherlands, Spain, the Slovak Republic and the UK.

3. Faced with difficulties, refugees wait to naturalise first and move as EU citizens;
4. People move but do not request transfer – either because they do not know they can, or because their stay is unlawful

The principal IMES researcher and two research assistants conducted the interviews. The full DRC-MPI-IMES research team developed a broadly formulated questionnaire, which was used to make sure all relevant items were addressed during what usually were rather informal conversations. The reason for choosing this method was that we wanted to make sufficient room for the respondents to bring to the fore their own views and experiences. Following a tight interview agenda might easily have prevented respondents from opening up about their experiences and impressions. Interviews generally lasted between 30 and 60 minutes. If possible they were conducted without the assistance of interpreters but this was not feasible in all instances.

The Questionnaires for policy and decision-makers included questions on future scenarios. The scenarios were initially conceived on the basis of investigation of current practice on transfer of responsibility for refugees and of other EU policy discussions on free movement for citizens and long-term resident third country nationals, as well as the EU progress on a Common Asylum System. An early sketch of the potential scenarios was discussed with the interviewees. The responses of these interviewees were shared between the Danish Refugee Council researcher and the Migration Policy Institute researcher. In addition, discussions between the three researchers and between them and the Commission representatives responsible in this area, and with UNHCR staff, allowed a further refining of the scenarios. Six scenarios are sketched, with their reasoning and consideration of the potential advantages and disadvantages is given, with the intention of presenting options to deal with various potential motives and goals.

5. Layout of the Report

The report that follows is divided into three Parts.

In Part 1 we examine the existing international and regional legal frameworks, focusing on the 1951 Convention, the 1980 European Agreement on the Transfer of Responsibility for Refugees and Bilateral Agreements. In considering the 1951 Convention we assess the seeming centrality of the Travel Document; the extraterritorial effect of the determination of refugee status; the transfer of residence right, including the actual centrality of lawful residence; the overlap and distinctions between status determination; stay or residence; and travel documents and protection obligations and the standards of protection obligations and criteria of entitlements to treatment. Finally in this section we assess the scope of protection responsibilities implied in the transfer of responsibility for issuing Travel Documents.

We then turn to the 1980 European Agreement on Transfer of Responsibility for Refugees, looking at the background to this agreement, the implications of its reference

to “Two years of actual and continuous stay” and the scope of responsibility transferred on application of the European Agreement.

Finally in this Part we turn to the few bilateral Agreements in existence in Europe, and the clear distinctions between Convention status and subsidiary protection with regard to international obligations in the context of transfer.

In Part 2 we turn to current practice. We describe the existing systems for transfer of protection in place in Member States and Switzerland, looking both at countries using the European Agreement on Transfer of Responsibility for Refugees and those states which do not use this agreement. We offer a qualitative and quantitative assessment of transfer of protection carried out in Member States, and an analysis of practice, looking at each aspect drawn out in the country reports. These include the ratification of relevant international and regional instruments and their application and implementation; the level of transfers; the causes for movement and for request for transfer of responsibility as seen from the states; the categories covered (Convention - subsidiary protection) and the criteria employed for accepting transfer of responsibility for the issuance of travel documents. We then also return to the matters of the “Lawful residence” criteria of the 1951 Convention and the application of extraterritorial effect to refugee status determination carried out by other State party as examined in Part 1. Finally we consider the rules (or absence thereof) relating to unaccompanied minors and any UNHCR and/or NGO involvement

The final section of Part 2 turns attention to the refugee Experience. We describe actual cases as reported during interviews, and analyse these in the categories of people thinking about moving; decided or hoping to move; people who are moving or have moved; and those who have successfully transferred protection. In concluding this section we assess the motives refugees having for moving and transferring protection; the obstacles to their transfer of protection; the need for full information; the current strategies undertaken by refugees and finally the successes and best practices regarding transfer of protection

In PART 3 we turn to our assessments of potential Future Scenarios – both those between Member States and those between non-Member States and Member States. We set out six scenarios for the future, responding to the reactive and proactive ‘questions’ set out earlier in this Introduction. We do not seek to be proscriptive, but rather creative – offering a set of options with the pros and cons included. These scenarios are:

- A. The refugee becomes an asylum seeker again in the second state
- B. The refugee is recognized as such without new procedures (as set out in the 1951 Convention)
- C. The refugee is dealt with in the same way as long-term resident third country nationals (whether LTR status is granted or not)
- D. The refugee is treated in the same way as EU nationals even if the refugee has not naturalized, and so does not have citizenship of a Member State (ie similar to the directive on free movement for EU citizens)

- E. The refugee's treatment in the second Member State is dependent on the reason for movement, and not on the protection claim.
- F. A new system is created for refugees to move and reside in the whole EU, as part of the Common European Asylum System

Also in this part we set out clearly the combination of, and comparison between, the rights of refugees (under the 1951 Convention); the rights of Long-Term Resident Third Country Nationals in the EU and the rights of EU citizens, so that we can establish the differences between treatment in these three categories of people who could potentially move around the Union.

In Conclusion we draw out the main themes of the study.

Part 1 – Existing international and regional legal framework

In this first of three parts to this report, we describe and discuss the binding standards of international and regional instruments. This is intended to provide background information of use in assessing the detailed country reports as well as the future scenarios. The instruments that will be described in this part are the 1951 Convention relating to the Status of Refugees and the 1980 European Agreement on Transfer of Responsibility for Refugees. Together, these two instruments provide a basic threshold, on which any additional agreement on transfer of responsibility and protection status between EU Member States could – or should - build.

In this Part of the report we therefore:

- Give an overview of existing binding standards of international and regional, bilateral and multilateral instruments within the field of transfer of protection status, and the relationship between those standards;
- Describe and analyse the elements of international refugee law, which are of direct and essential importance to the question of transfer of protection status; and
- Draw out some preliminary analytical conclusions regarding the centrality of residence status/ requirements and of the issuing of refugee Travel Documents.

We do this first by addressing the 1951 Convention, including:

- The centrality of the Travel Document
- The relevance of the extraterritorial effect of determination of refugee status
- The centrality of residence status and rights
- The substantive overlaps and distinctions between responsibility and protection, including the scope of each which might be transferred
- Highlights of the standards of protection included in the 1951 Convention

We then turn to the European Agreement on the Transfer of Responsibility for Refugees and to bi-lateral arrangements, which have been concluded, in order to make actual transfer more effective. Finally, we comment on the distinctions between Convention status and subsidiary protection in the context of transfer.

1. 1951 Convention Relating to the Status of Refugees

The fundamental principles of refugee protection are contained in the 1951 Convention relating to the Status of Refugees. In addition to defining who is a refugee and establishing the principle of *non-refoulement*, the 1951 Convention is the key legal document defining the rights (and obligations) of refugees and the legal obligations of states towards the full protection of refugees.

Although the Travel Document used by a refugee is one of the core issues at stake when discussing transfer of responsibility for refugees, as already noted in the Introduction, both protection and any transfer of protection status involve much more than the entitlement to and issuing of Travel Documents.

A key question in the context of this study, emerging from a reading of the 1951 Convention and the Executive Committee (ExCom) Notes and Conclusions is whether the articles concerning the rights of refugees are in anyway linked to the territory or jurisdiction of the Contracting State in which status was determined? Are they, in fact, the rights of people determined to have refugee status wherever they may be, regardless of which State granted the status? What happens if a person is granted refugee status in the US, and moves, temporarily or for the long term, to an EU Member State, with lawful residence status in that EU Member State? Does the Member State not have to uphold the rights of the individual just because it was the US which granted them refugee status, and because the Member State in question may have granted them lawful residence but not refugee status? What would an EU Member State expect to happen to a refugee who moved for lawful residence purposes to Canada or the US? Would the EU Member State expect to maintain protection of that person, and anticipate that the US or Canada would not uphold the individual's refugee rights because they had not been the state which determined the status?

These questions return us to the major issue of what exactly constitutes protection. If the individual is lawfully residing in a state it might appear to make little difference in terms of the content of their rights within that state whether they are a refugee or an immigrant for non-refugee related reasons. At the point of taking up lawful residence in a second state, the refugee is doing so for non-refugee related reasons, unless they are requesting asylum due to lack of protection in the state which initially had granted refugee status. So, the protection at issue is not only a matter of the rights the person should enjoy. Rather, it is also concerned with at least two additional issues:

1. The state which has ultimate responsibility for taking back the individual if residence rights should be revoked; and
2. The state which is responsible for issuing a Travel Document or other identification papers in the absence of a state of citizenship or nationality.

The practical need to consider a transfer of responsibility for refugees generally comes to light at the moment at which a refugee requests a renewal of a Convention Travel Document in a state in which they are lawfully resident, which is not the state which determined their refugee status and issued their current Travel Document. For this reason, the Travel Document appears to be central.

1.1. The apparent centrality of the Travel Document

The Convention Travel Document has its roots in the Nansen Passport of the 1920s. Refugees are as likely to need to offer identity papers or cross borders to travel for pleasure or work as anyone else. However, they generally do not have access to a

national passport. The Convention Travel Document replaces the passport and alerts other state authorities to the fact that the individual before them is under the protection of a specified Contracting State to the 1951 Convention. The main questions of relevance in the context of this study are who should issue a Travel Document to individual refugees, when and why.

Article 28 of the 1951 Convention Relating to the Status of Refugees says:

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.

The Schedule to the 1951 Convention which prescribes the form of the Convention and contains a number of provisions of direct or indirect relevance to the question of transfer of responsibility for the issuing of Travel Documents to a refugee, says that:

“The document shall have a validity of either one or two years, at the discretion of the issuing authority” (Paragraph 5)

In fact, as will be seen in the country reports below, the Travel Documents issued by many of the EU Member States have a validity of several years, including some as long as ten years. This could mean that the need to actually request a transfer of responsibility arises only many years after actual movement for lawful residence purposes has taken place. The other issue raised here, which will be the subject of further discussion in a later section of this part of the study, is the meaning of ‘lawful stay’, especially as contrasted with lawful residence.

Further, the Schedule establishes that:

"The renewal or extension of validity of the Travel Document is a matter for the authority that issues it, **so long as the holder has not established lawful residence in another territory** and resides lawfully in the territory of the said authority. The issue of a new document is, **under the same conditions**, a matter for the authority which issued the former document" (Paragraph 6.1 – bold added for emphasis)

“Diplomatic or consular authorities, specifically authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of Travel Documents issued by their governments.” (Paragraph 6.2)

“Neither the issue of the document nor the entries made on it determine or affect the **status** of the holder, particularly as regards nationality.”
(Paragraph 15 – bold added for emphasis)

”The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on the diplomatic or consular authorities a right of protection.” (Paragraph 16)

Relating specifically to *transfer* of responsibility to another State, the Schedule to the 1951 Convention stipulates that:

“When a refugee has **lawfully taken up residence in the territory of another Contracting State**, the responsibility for the issue of a new document, **under the terms and conditions of article 28**, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.” (Paragraph 11 - our emphasis)

“The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.” (Paragraph 12)

Transfer of responsibility for the issuing of Convention Travel Documents under the 1951 Convention and its Schedule, thus presupposes transfer of lawful residence and is determined by the time-limit set by the Convention Travel Document issued by the first country of protection.

The question of transfer of responsibility or of protection status from one Contracting State to another has given rise both to a series of ExCom Notes and Conclusions and to regional and bi-lateral arrangements. While ExCom Conclusions, and the Notes that precede their preparation, are non-binding in nature, they have an advisory and standard setting role. The sixty-six states which are members of the Executive Committee agree on the Conclusions, making them broadly representative of a wide range of states, including some sixteen EU Member States, four other European states and several states which are not in fact signatories to the 1951 Convention or the 1967 Protocol.

Note (EC/SCP/9) *On Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, discusses the problems encountered in relation to the implementation of the Convention’s provisions on transfer of responsibility:

30. Where a refugee has lawfully taken up residence in the territory of another Contracting State, the latter – in accordance with paragraph 11 of the Schedule will issue a new Travel Document to him. The practice of

States in this regard is not uniform. In some States, the issue of a new Travel Document is automatic. In others, a new Travel Document is subject to a more or less formal verification of refugee status, which will only be fully re-examined if serious doubts exist as to whether the person concerned is in fact a refugee, e.g. if it appears that one of the cessation clauses in article 1.C or an exclusion clause in article 1.F may be applicable in his case. In other States again, refugees are frequently not issued with a new CTD but simply a passport for aliens. In view of the general considerations set out in the preceding paragraphs, however, the question arises as to whether such a practice is in accordance with the letter and the spirit of the 1951 convention.

ExCom Conclusion 13 (XXIX) – 1978 discusses unnecessary hardship in relation to the extension of a Travel Document:¹⁰

(d) Recommended that in order to avoid unnecessary hardship a refugee requesting an extension of validity or renewal of his Convention Travel Document should not be required to return to the issuing country for that purpose and should be enabled to secure such extension of validity or renewal of the Convention Travel Document, also for periods beyond six months, by or through the diplomatic or consular representatives of the issuing State;

Note (EC/SCP/10) *On Travel Documents for Refugees*, further notes the lack of indication in the relevant provisions of the 1951 Convention as to the circumstances in which a refugee must be considered to have “lawfully taken up residence in the territory of another Contracting State”, which has led to situations where refugees, through no fault of their own, have become the victims of different interpretations and varying practices by States. The Note further reminds of the fact that it was, inter alia, in order to help overcome difficulties of this kind that the recommendation in sub-paragraph 3. Paragraph 6¹¹ was introduced (paragraphs 26 to 28).

ExCom Conclusion 13 (XXIX) – 1978, on this basis,

(e) Recommended that, with a view to avoiding divergent interpretations of paragraphs 6 and 11 of the schedule and the resulting hardships to refugees, Contracting States make appropriate arrangements, including the adoption of bilateral or multilateral agreements, concerning the transfer of responsibility for the issue of Convention Travel Documents;

¹⁰ Executive Committee Conclusion, **Travel Documents for Refugees** (No. 13 (XXIX) - 1978)

¹¹ “The Contracting States shall give sympathetic consideration to renewing or extending the validity of Travel Documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable a document from the country of their lawful residence” (Paragraph 6 (3) of the Schedule to the 1951 Convention)

Table 1: Summary: 1951 Convention, ExCom Conclusions and Notes on Travel Document, Movement (and Transfer of Protection)

Category	Position	Comments
Travel Document	<p>1951 Convention: Article 28, Schedule para. 5 and 6 Contracting States issue and renew or extend Travel Documents to refugees <i>lawfully residing</i> in their territory. Travel Documents are valid for one or two years.</p> <p>EC/SCP/10: -Renewal or extension of the Travel Document is a matter for the issuing authority, unless the holder of the Travel Document has taken up lawful residence somewhere else. In this case, the new country of residence assumes responsibility for the Travel Document. (19) (ExCom Notes EC/SCP/9, par 30) -Diplomatic or consular authorities should be able to renew or extend the Travel Document. (20), (EC/SCP/13, par d)</p> <p>-period of residence after which the transfer of responsibility for the Travel Documents takes place is usually two years under existing bilateral and multilateral agreements. (27)</p> <p>ExCom Notes EC/SCP/9: Provisions of the Convention concerning the transfer of responsibility the issuance the Travel Document only relate to cases where refugee establishes lawful residence in new Contracting State. (22)</p>	
Residence permit/status issues in a Second State	<p>ExCom Conclusion. 58: If a refugee moves illegally from the country in which it has been granted protection, he can only be returned to that country if he will be protected against refoulement. (f)</p> <p>ExCom. Notes EC/SCP/9 When a refugee moves to a second Contracting State, that state should not need to reassess his status and the refugee should not be required to provide explanations as to why he is in need of protection (except for in serious circumstances where the legitimacy of the claim is questionable).(15,16,)</p> <p>When a refugee travels temporarily to another</p>	

	Contracting State his refugee status should be accepted. If he wants to stay longer than the period allowed for a temporary visit he must obtain a residence permit (usually the same as granted to ordinary aliens, but some states make reference to refugee status on the residence permit).(20)	
Transfer of residence status from one Contracting State to another	<p>ExCom. Conclusion. 12: -Persons considered as refugees under the 1951 Convention maintain that status unless they fall under a cessation or exclusion clause. (d) -Refugee status determined by one Contracting State will be recognized by the other Contracting States. (f)</p> <p>ExCom Notes EC/SCP/9: Convention does not address admissions nor does it give the refugee the right to transfer his residence status to another Contracting State without the agreement of that state. (22)</p> <p>Convention does not address when and under what circumstances a refugee is considered to have taken up legal residence in a second Contracting State. States rely on bilateral or multilateral agreements (31)</p> <p>Refugees should be able to travel and transfer his residence without fear of losing his refugee status. (32)</p>	
Freedom of Movement	1951 Convention – Article 26 Same as aliens generally in the same circumstance.	

The Travel Document used by the refugee – the Convention Travel Document – is at the heart of the issue of transfer of protection status in three ways:

1. As noted above, the refugee is ‘different’ from other third country nationals who are long-term resident in the European Union because the refugee travels on a Convention Travel Document issued by a Member State.
2. The refugee who moved to reside lawfully in a second Member State might only come to the attention of the authorities of that state as being a refugee whose situation in their country requires their protection at the moment of requesting renewal or a new Convention Travel Document. This can be the case even if the Convention Travel Document has been seen or used for visa and admission purposes, because different parts of immigration services may not connect the issues.
3. The Convention Travel Document, according to the 1951 Convention relating to the Status of Refugees and as elaborated on in a number of EXCOM Notes and

Conclusions, is to be renewed by the contracting state in which the refugee lawfully resides.

It is point 3 in the above list which gives rise to the opening statements and questions of this report, indicating that the issue of transfer of protection status can be thought of in two ways:

1. Member States conferring a right to residence in all EU Member States to all refugees whose status is determined in any of the Member States and who meet criteria mutually agreed upon by the Council; and
2. Recognizing the right of all refugees who lawfully take up residence in a state other than the one that has determined their refugee status, to have their Convention Travel Document issued or renewed by the contracting state in which they lawfully reside.

A major question which arises is whether the fact of (re-)issuing a Convention Travel Document means that a State has accepted or taken on responsibility for the protection of the refugee. Furthermore, does recognition in a Member State confer the right to reside in another Member State? And if the refugee is residing in the second Member State, does this mean that their protection has been transferred? These are among the key questions of discussion in this report.

1.2. Extraterritorial Effect of the Determination of Refugee Status

Another question of major relevance to a discussion of transfer of responsibility or protection status is whether refugee status determined in one State is “valid” or recognised, in and of itself, in other States party to the 1951 Convention.

Of central importance to the understanding of the extent of State obligations towards refugees who move across borders, is the *ExCom Conclusion No. 12 (XXIX) 1978 on Extraterritorial Effect of the Determination of Refugee Status*. In this Conclusion, ExCom says that, taking into account the following six points, there is limited scope for questioning the actual refugee status of a person who has been granted that status. The six points are:

- (a) that one of the essential aspects of refugee status ... is its international character;
- (b) ... the desirability for maintenance and continuity of refugee status once it has been determined by a Contracting State;
- (c) that several provisions of the 1951 Convention enable a refugee residing in one Contracting State to exercise certain rights – as a refugee – in another Contracting State and that the exercise of such rights is not subject to a new determination of his refugee status;

- (d) that persons considered as refugees under Article 1A (1) of the Convention maintain their refugee status unless they fall under a cessation or exclusion clause.
- (e) ... that refugees, holders of a Convention Travel Document issued by one Contracting State, are enabled to travel as refugees to other Contracting States;
- (f) that the very purpose of the 1951 Convention and the 1967 Protocol implies that refugee status determined by one Contracting State will be recognized also by the other Contracting States

The conclusion taking the above six points into account is that:

- (g) ... that refugee status as determined in one Contracting State should only be called into question by another Contracting State in exceptional cases when it appears that the person manifestly does not fulfill the requirements of the Convention, e.g. if facts become known indicating that the statements initially made were fraudulent or showing that the person concerned falls within the terms of a cessation or exclusion provision of the 1951 Convention.

In preparation for the drafting of the above ExCom Conclusion UNHCR submitted a Note (EC/SCP/9) *on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* was made.¹² This Note was based on an analysis of the relevant international instruments defining the legal status of refugees, the preparatory works of the 1951 Convention and on information available concerning the practice of States regarding extraterritorial effect of the determination of refugee status.

Relevant passages of this Note include:

.... The requirement of a fresh determination of refugee status as a precondition [for exercising various rights provided for in the 1951 Convention in a country other than the one in which he is normally resident] would give rise to a number of technical difficulties, which could seriously impede the effective exercise of these various rights.... (para. 14-15)

This view is supported by the practice of a number of States and also by the travaux préparatoires to the 1951 Convention. As regards access to the courts, the question of possible need for a fresh determination of refugee status was given some consideration by the Conference of Plenipotentiaries. An amendment was introduced to include after the words “in countries other than the one in which he has his habitual

¹² UNHCR notes of this type set out UNHCR's policy and legal positions. Their character is legal insofar as the authority of UNHCR to issue legal positions stems from the supervisory responsibility of UNHCR in conjunction with Article 35 of the 1951 Convention.

residence” the words “and if he is considered by such countries as being a refugee under the terms of this Convention”. After some discussion, however, this proposed amendment was withdrawn. The Conference did not therefore consider it necessary to introduce a provision to this effect and several representatives indicated that it would be sufficient to have regard to the determination of refugee status by the first Contracting State. (para. 16)

Considerations similar to those mentioned in the preceding paragraphs are also relevant as regards article 33, paragraph 1, of the 1951 Convention, which incorporates the fundamental humanitarian principle of non-refoulement. This provision applies to a refugee, irrespective of whether he is normally resident or, even lawfully present, in the territory of a Contracting State...(para. 17)

...Recognition of the validity of a Convention Travel Document can normally be taken also to imply acceptance of the previous determination of refugee status, which formed the basis of the issue of the Convention Travel Document by the other Contracting State. Just as a national passport is prima facie evidence of the holders’s nationality, a Convention Travel Document should be (and in fact is), in the absence of the proof to the contrary, accepted as evidence of the holder’s refugee status. (paragraph 18)

The view expressed in the preceding paragraph is supported by the wording of article 1 of the European Agreement on the Abolition of Visas for Refugees, of 20 April 1959. ... This article clearly indicates that for the purposes of the Agreement, the holder of a 1951 Convention Travel Document is to be considered a refugee. (paragraph 19)

Paragraph 31 of this Note draws attention to the fact that none of the bilateral and multilateral agreements concluded to establish the point at which a refugee can be presumed to have taken up residence in the territory of another Contracting State (the point at which, therefore responsibility for the issue of a Convention Travel Document is transferred) contains any requirement for a fresh determination of refugee status. It is further noted, in Paragraph 32, that:

The provisions of these bilateral and multilateral agreements, and indeed paragraph 11 of the Schedule to the 1951 Convention itself, are based on the assumption that the persons to whom they relate move to the territory of another Contracting State as refugees. Without this assumption, these various provisions would lose their entire meaning and object. In the absence of strong reasons to the contrary, therefore, it would be inconsistent to call into question the refugee status of persons who, as refugees, are considered to have transferred their residence to the territory

of another Contracting State in accordance with these same provisions...
... A refugee should, indeed be able to travel and to transfer his residence without being in fear of losing his refugee status.

Furthermore, in paragraph 33, this Note indicates that several representatives in the drafting of the Convention took the view, which finally prevailed, that a more restrictive definition of a refugee should be adopted in order that it should be acceptable to all Governments, precisely to avoid a situation in which a person could be considered a refugee in one State, but not in another.

Finally, the Conclusion of the Note states:

The provisions of the 1951 Convention, seen against the background of the travaux préparatoires leading to its adoption and of earlier international refugee instruments, illustrate a fundamental concern of Contracting States to safeguard the maintenance and continuity of refugee status once it has been determined.... (paragraph 35)

... A requirement that ... exercise of rights [in another contracting state than the one of residence] should be dependent upon fresh determination of refugee status by the other Contracting State was eventually not included in the 1951 Convention (paragraph 36)

The institution of the Convention Travel Document ... serves to underline the internationally recognized character of refugee status....(paragraph 37)

[The provisions for transfer of responsibility for the issue of a refugee Travel Document] indicate that the determination of refugee status leading to the issue of a Convention Travel Document should normally be accepted by the Contracting State to which the refugee, with the consent of that State, has lawfully transferred his residence (paragraph 38)

The above conclusions would not, of course in any way affect the right of States to reexamine refugee status in cases where there are serious reasons for believing that a determination was wholly unjustified.... (paragraph 39)

A careful reading of the 1951 Convention, together with contextual research into the preparatory works which lead to agreement on its contents, and associated issues led the Executive Committee to firmly conclude that refugee status when once determined by one contracting State should not be questioned or opened to re-determination unless there are concrete indications make it apparent that the refugee status of the person concerned might in fact have ceased or is otherwise unjustified.

Since the adoption in 1978 of ExCom Conclusion No. 12 (XXIX) on Extraterritorial Effect of the Determination of Refugee Status, no legal developments of direct relevance

to the question of transfer of protection status have occurred within the UN framework. However, reference should be made to the policy developments in the context of UNHCR's three-pronged proposal presented during a process of dialogue with EU Member States in 2003. The proposal focuses on multilateral cooperation and the equitable sharing of burdens and responsibilities.¹³ In its revised "EU prong" proposal of December 2003, addressing, *inter alia*, the "concerns of ... [the new] EU Member States on the external borders of the enlarged EU likely to be most affected by the implementation of Dublin II and Eurodac" UNHCR proposes, among other things, subsequent settlement through burden-sharing arrangements between EU Member States of those found to be in need of international protection under procedures carried out in EU Reception Centres:

10. Settlement of those found to be in need of international protection in EU Member States on the basis of agreed criteria represents a key element of UNHCR's proposal. Otherwise the potentially overwhelming burden of hosting *and* integrating persons in need of international protection is likely to fall largely on EU Member States at the external borders of the Union. Asylum-seekers' awareness that cases recognised in EU Reception Centres would end up being settled among all Member States, rather than just in the Member State hosting the EU Reception Centre would represent an incentive for applicants to remain in the Reception Centre to which they had been assigned until a decision is made, thus reducing pressure for onward irregular movement among Member States. The criteria for an equitable distribution would take into account:

- effective links, including family, educational, or cultural ties;
- the absorption capacity of Member States; and
- the contribution to burden sharing made, for instance, by Member States with EU Reception Centres on their territory.¹⁴

The part of the revised "EU-prong" proposal cited above is designed to address situations "in EU Member States where the number of transfers under Dublin II and the effect of Eurodac threaten to jeopardise the effective implementation of these instruments." It envisages decision-making in the EU Reception Centres "that lead to a uniform status for those in need of international protection valid throughout the Union." Those recognised to be in need of international protection in this process would be settled in participating

¹³ UNHCR Working Paper, **UNHCR's Three-Pronged Proposal**, Geneva June 2003

¹⁴ UNHCR Working Paper, **A Revised "EU Prong" Proposal**, Geneva 22 December 2003. Reference should also be made to the *Convention Plus* process initiated and co-ordinated by UNHCR, which, *inter alia*, is addressing issues relating to irregular secondary movements world-wide of, amongst others, recognised refugees. Also in this context (although not specifically addressing European issues) protection concerns have led to the pointing at the need for better responsibility- and burden-sharing systems, and one suggestion has been to consider the linkage between the strategic use of resettlement and its impact on addressing irregular secondary movements of refugees and asylum seekers, see for example **Progress Report: Convention Plus** (FORUM/2004/2) of 20 February 2004, and **Convention Plus - Issues paper submitted by UNHCR on Addressing irregular secondary movements of refugees and asylum-seekers** (FORUM/CG/SM/03) of 11 March 2004. For a general introduction to *Convention Plus*, see **Convention Plus at a glance (as of 14 May 2004)**, UNHCR

EU Member States in accordance with agreed-upon burden-sharing criteria, whilst those found not to be in need of international protection would be returned under similarly joint operations.

While the proposal is just that – a proposal, and not a decision - it is very concrete and forms part of the new thinking about asylum developments in Europe, which is closely related to the question of transfer of protection status. It suggests inserting the concepts of transfer of responsibility for protection and of protection status more broadly into burden-sharing strategies. These strategies should include shared responsibility not only for the processing, but also for the outcome of refugee status determination procedures - be it return of rejected asylum seekers or integration of recognised refugees or persons in need of subsidiary protection. The suggestion for additional criteria for secondary movement of recognised refugees (or others determined to be in need of international protection) should be seen in relation to the *proactive* situation set out in this study, in which Member States may choose to accord refugees a right (under certain conditions) to transfer their protection status to another State.

1.3. Transfer of residence rights: the actual centrality of lawful residence

On the subject of transfer of residence rights from one Contracting State to another, UNHCR Note (EC/SCP/9) *On the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* recalls that:

22.the 1951 Convention contains no provisions regarding admissions. Nor does it give the refugee a legal right to transfer his residence to the territory of another Contracting State without the agreement of that state. The provisions of the 1951 Convention concerning the transfer of responsibility for the issue of refugee Travel Documents therefore only relate to cases where a refugee establishes lawful residence in the territory of another Contracting State with that State's consent.

Paragraph 31 notes that no specific indication is given in the Schedule as to when lawful residence can be considered as having been taken up. This paragraph refers to bilateral and multilateral agreements that serve as a framework for this issue (the Council of Europe's European Agreement would be one of these). Such agreements, it is noted, also provide for the transfer of responsibility once the conditions have been fulfilled *without specifying any requirement for a fresh determination of refugee status*.

This acknowledges that generally speaking a refugee moving to a second Contracting State and taking up lawful residence in that State will do so on ground unrelated to their situation as a refugee. One question which will arise in Part 2 is whether those grounds for taking up lawful residence in the second State, when both states are Member States of the European Union, could be part of the rationale for deciding the criteria on which refugees may be granted the right to move and reside freely in all EU Member States.

One can infer two additional criteria of relevance to this study:

1. Lawful residence is not likely to be, or even could not be, taken up for the purpose simply of seeking an alternative state of refuge **unless states decide to grant that right**. If that was the purpose of the movement, the refugee would need to request asylum – a request which would only be relevant to the seeking of protection from persecution in the first Contracting State which had granted refugee status.
2. The refugee cannot, or is unlikely to, move to the second Contracting State simply on the basis of their refugee status in the first state. On entry or on taking up lawful residence in the second state, the status of the individual as a refugee in the first state is bound to be made known in order for residence documents to be produced.

These criteria are relevant not least because of their relation to the *proactive* situation set out above, in which EU Member States may, as part of the advancement of the freedom of movement in a frontier-free and integrating Union, choose to accord refugees a right to transfer their protection status to another state.

1.4. The overlap and distinctions between status determination; stay or residence; Travel Documents and protection obligations

The determination of a person as having refugee status, the nature of their stay or residence (be it lawful or unlawful; short-term or long-term); the issuance of their Travel Document and protection obligations of states are all overlapping – or interlinked - elements in consideration of the possibilities for transfer of responsibility. They are also distinct elements.

The overlaps and distinctions become particularly important in the context of transfer when one asks which state has the *protection obligations*? Is it the state that determined the refugee status? Is it the state in which the person is lawfully or *de facto* residing or staying? Or is it the state that issued the Travel Document. These may effectively be three different states (if, for example, a refugee was determined to have status in Australia; moved to Canada to reside their lawfully for employment purposes and had a new Travel Document issued by Canadian authorities and has now lawfully moved to the US for residence, but not yet applied for a new Travel Document).¹⁵

In this example, it could perhaps be argued that any of the three states, or all of them, have protection obligations. In practice, there are more likely to be just two states involved – but again, arguably, both could have obligations. The one could have an obligation because it determined refugee status – the other because it is where the refugee

¹⁵ This is a hypothetical and not a real example, sketched for illustrative purposes only, and not implying that any of the states concerned have faced such situations.

lawfully resides and where the most recent Convention Travel Document was issued. This gives rise to questions such as whether or not the second state should itself consider the refugee claim anew.

When a person with refugee status has moved and requests a new Travel Document in another Contracting State, their status as a refugee should not, according to the 1951 Convention (Article 28 and the Schedule), ExCom Notes and Conclusions be questioned, or opened to re-determination, unless there are serious reasons to believe that the cessation or exclusion clauses could apply.¹⁶ This would seem to imply that once a person is a refugee, they are always a refugee, until and unless they naturalise.

The next issue in this meshing of situations giving rise to a protection obligation is that of being the state in which the individual is lawfully resident or staying. Precise mechanisms for deciding that lawful residence has been established in a Contracting State other than that which determined status and issued the original Convention Travel Document have been laid out in the bilateral and multi-lateral agreements which will be discussed below. They are not so clearly established at all in general international refugee law or practice. Yet, lawful stay and/or residence are linked explicitly to the need to transfer responsibility for the refugee (whether or not protection status is considered to be transferred) under the terms of the 1951 Convention and the advisory Conclusions of the Executive Committee, as manifested by the issuing of a replacement Travel Document.

Travel Documents are, in all cases, issued on the basis of status. The determination of status is the initial link between the Contracting State and the individual refugee. However, the Convention clearly establishes that the determination of status is not the only link that can exist between state and refugee in order for a Contracting State to be held responsible for issuing the Travel Documents. Rather, the fact of granting lawful residence to a person who is a refugee is a second category of relationship which can result in a Contracting State being asked to, and becoming responsible for the issuance of a Travel Document. Granting such lawful residence also, in principle, leads to the extension of full protection under the 1951 Convention to the refugee. Issuance of the travel document by the second state is only the symbolic marker of the transfer having taken place. The fact that lawful residence granted to refugees carries with it protection of their rights also means that the second state would be unable to end residence rights unless the cessation or exclusion clauses became relevant.

The actual scope of State obligations towards refugees, once their status has been determined, is first and foremost linked to the territory of actual stay or residence of the refugee, rather than to where the determination of refugee status took place. Normally, the State which has determined refugee status will also bear primary responsibility for extending to the refugee all the rights and benefits flowing from the 1951 Convention. This is, however, only so because the refugee will normally will be granted a residence permit upon recognition of his status in the state in which the asylum application was

¹⁶ States do, in practice, apply cessation and exclusion clauses under differing circumstances, giving rise to differences in their approaches to refugees from particular states or backgrounds. This might be considered, in situations of transfer, as somewhat discriminatory.

lodged. Most refugees will then remain in that state for the foreseeable future. However, if a refugee moves or travels to another state, the obligations of Contracting States generally become relevant. The nature and evolution of the refugee's presence or stay in a second Contracting State will give rise to modifications in the concrete protection obligations of that State. Whereas it seems that most states have generally accepted this position, some do not always agree in practice or act accordingly. There is still some disagreement on *when* a person has taken up lawful stay or residence in a state in the meaning of the 1951 Convention, in spite of attempts to solve the issues of interpretation through the adoption of the European Agreement and similar bilateral agreements. This disagreement extends to issues such as *whether* that lawful residence is of a duration that implies an evolution of the relationship between the second state and the refugee and *what* protection obligations are involved in that changing relationship.

1.5 Standards of protection obligations and criteria of entitlements to treatment under the 1951 Convention

The 1951 Convention effectively responds to the question of *what* protection obligations are involved in a changing relationship due to the move of a refugee from one contracting State to another.

In addition to prohibition against refoulement, which is the corner stone of protection, the protection obligations of contracting States include a catalogue of minimum standards of treatment applicable to refugees lawfully or unlawfully in the territory of contracting States. Those standards of treatment relate to a range of civil as well as cultural, social and economic rights and are embodied by Articles 3 to 33 of the 1951 Convention.

1.5.1 Standards of protection obligations

Dependant on the type of right concerned and on the nature of the stay of the refugee, States are obliged to guarantee refugees present in their territory treatment of a standard, which varies in five steps from (lesser treatment to better treatment):

- Treatment that is *accorded to aliens generally*;
- *Most favourable treatment accorded to nationals of a foreign country*;
- Treatment as *accorded to nationals of the country of habitual residence*;
- Treatment *accorded to nationals of the country of stay*; to
- Treatment that is *applicable to refugees by virtue of their status as refugees*.

The minimum standards of treatment in key areas to which refugees are entitled under the 1951 Convention vary dependent on the five categories noted above. They furthermore vary in relation to whether the refugee is lawfully or unlawfully in the territory of the country of stay and, in some instances, to the more specific nature of that stay. Some rights (and the duty contained in Article 29, to honour fiscal responsibilities) are applicable in all Contracting States. Other rights relate only to the state of residence. An

extensive tabular overview of these rights related to each category is set out in Appendix Three. For the purpose of this discussion, the range of these rights related to the nature of the stay within the territory of any given contracting State and the corresponding category of treatment to be accorded by that State can be summarised as follows:

Treatment, which is accorded to aliens generally:

When the refugee is legally or illegally in the territory	Only when the refugee is lawfully staying in the territory
Non-discrimination (Article 3)	Self-employment (Article 18)
Education other than primary (Article 22 (2))	Housing (Article 21)
	Freedom of Movement (Article 26)

Most Favourable Treatment accorded to Nationals of a Foreign Country

When the refugee is legally or illegally in the territory	Only when the refugee is lawfully staying in the territory
N/A	Right of Association (Article 15)
	Wage-earning employment (Article 17)

Treatment accorded to Nationals of the country of habitual residence (including when the refugee is in another country, he should be accorded the treatment which would be given to a person who is a national of his country of habitual residence)

When the refugee is legally or illegally in the territory	Only when the refugee is lawfully staying in the territory
Artistic rights and industrial property (Article 14)	N/A
Matters pertaining to access to Courts (Article 16 (2) and (3)) [In any Contracting State]	

Treatment accorded to Nationals of the country of stay

When the refugee is legally or illegally in the territory	Only when the refugee is lawfully staying in the territory
Freedom of Religion (Article 4)	Public Relief (Article 23)
Access to Courts (Article 16 (1))	Certain matters of labour legislation and social security (Article 24)
Primary Education (Article 22 (1))	
Duty to honour fiscal charges (Article 29) [In any Contracting State]	

Treatment accorded to refugees specifically as refugees

When the refugee is legally or illegally in the territory	Only when the refugee is lawfully staying in the territory
Issue of Identity Papers (Article 27)	Issue of Travel Documents (Article 28)
Exemption from penalties in respect of illegal entry or presence (Article 31)	Limitations on liability to expulsion (Article 32)
Prohibition against refoulement (Article 33)	

In addition, **Treatment accorded to refugees specifically as refugees** includes:

In any Contracting State	In the State of Residence
Exemption from exceptional measures (Article 8)	Continuity of residence (Article 10)
	Recognition of the Law of Personal Status (Article 12)
	Administrative Assistance (Article 25)
	Permission to transfer assets (Article 30)

While Article 28 on the issue of Travel Documents (a right accorded to refugees specifically as refugees when they are lawfully staying in the territory) is a key issue as set out above, the protection obligations of states towards refugees more broadly are clearly not insignificant. Indeed, they imply minimum standards of treatment, which to a large extent surpass the standards of treatment to be accorded to third country nationals in general. This is the case regardless of the state that has determined refugee status, and even regardless of whether or not the refugee is staying or residing lawfully in the territory of a Contracting State. Nonetheless, the nature of the stay as short-term or as residence is also important in shaping the gradation of rights to be respected.¹⁷

1.5.2 Criteria of entitlements to treatment

Entitlement to the various rights and benefits accorded under the 1951 Convention depends to a certain degree of the nature of the stay of the refugee within the territory of a Contracting State. Applying Guy Goodwin-Gill's distinction between different forms of stay and presence,¹⁸ as well as Paul Weis' analysis of the preparatory works of the Convention, we find three types of stay. These are:

Simple presence - Implies benefits extended to the refugees by virtue of their status alone as refugees and whether or not they are lawfully or unlawfully in the territory of a contracting State.

¹⁷ For a further elaboration of the issues relating to standards of treatment, see Goodwin-Gill, Guy S., **The Refugee in International Law** (Oxford: OUP, 1996) p. 297ff

¹⁸ See Goodwin-Gill, **Ibid.**, p. 307 ff.

Lawful presence - Implies admission in accordance with immigration rules of that country for a temporary purpose, for example as student, for medical attention or a visit. Physical presence is sufficient, The relevant provisions of the Convention use terms like "lawfully in the territory" (in French "qui se trouvent régulièrement").¹⁹

Lawful residence - For the purpose of the listing below, this term covers "residing", "residence", "lawfully staying" and "habitual residence". It indicates a stay, which is more than purely temporary, but need not be permanent.²⁰ "Lawful stay" is in French, normally "résident régulièrement" and, according to Goodwin-Gill, this indicates something more than mere lawful presence.²¹ Analysing the travaux préparatoires, Paul Weis concludes that "any refugee who, with the authorization of the authorities, in the territory of a Contracting State otherwise than purely temporarily, is to be considered as "lawfully staying" ("résident régulièrement"). Performing artist on a *tournée* in a country other than their country of residence may be regarded as being purely temporarily in the country."²² It seems to imply a "settling down and consequently a certain length of residence" and would normally exclude stays for limited time and purpose.²³ The term "habitual residence" was introduced to distinguish it from purely temporary residence. According to Goodwin-Gill, where the term "habitual residence" is used in other articles of the 1951 Convention than Article 1 A (2), "it signifies more than a stay of short duration, but was apparently not intended necessarily to imply permanent residence or domicile".²⁴

In the case of 14 of the rights set out in article 3 to 33 of the 1951 Convention, the treatment of refugees should be the same whether they are simply or lawfully present, or lawfully resident in a country.²⁵

There are three categories of rights for which lawful presence or residence is a guarantee of better treatment than simply presence in a Contracting State, namely the rights to:

- Self-employment (Article 18);
- Freedom of movement (Article 26); and
- The limitation on liability of expulsion (Article 32).

Lawful residence, meanwhile, gives greater rights in twelve categories than presence alone (whether simple or lawful). These are:

- The addition of an exemption from *legislative* reciprocity under Article 7;
- Continuity of Residence (Article 10);
- Personal Status (Article 12);

¹⁹ See Weis (ed.), **The Refugee Convention, 1951** (Cambridge University Press, 1995) p. 152 and Goodwin-Gill, **Ibid.**, p. 307f.

²⁰ See also Goodwin-Gill, **Ibid.**, p. 309 note 76.

²¹ Goodwin-Gill, **Ibid.**, p. 309.

²² Weis, **op.cit.**, p. 378.

²³ See Goodwin-Gill, **op.cit.**, p. 309.

²⁴ Goodwin-Gill p. 310. For a further discussion of the concepts of lawful stay and residence, see below at 2. The European Agreement on Transfer of Responsibility for Refugees

²⁵ These are articles number: 3; 4; 8; 9; 13; 14; 16; 20; 22; 27; 29; 31; 33.

- Right of Association (Article 15);
- Wage-earning employment (Article 17);
- Liberal Profession (Article 19);
- Housing (Article 21);
- Public Relief (Article 23);
- Labour legislation and social security (Article 24);
- Administrative Assistance (Article 25);
- Travel Documents (Article 28);
- Transfer of Assets (Article 30).

An extensive tabular overview of this progression for each category of stay is given in Appendix Four.

The above listing acknowledges the centrality of *lawful residence* (as defined above) of a given refugee for determining which State is primarily responsible for the protection in terms of extending full rights and benefits under the 1951 Convention to that refugee.

1.6 Scope of protection responsibilities implied in the transfer of responsibility for issuing Travel Documents: The centrality of lawful residence

As indicated above, transfer of protection obligations under the 1951 Convention already starts at the point when the refugee takes up lawful residence in a second State. Rather than initialising transfer, the transfer of responsibility for issuing Travel Documents under Paragraph 11 of the Schedule, is thus in fact finalising a process of transfer of substantial protection responsibilities from the first State to the second State and confirming the lasting nature of the refugee's change of residence.

The transfer of responsibility for a refugee indicated by the issuing of a Convention Travel Document by the authorities of a State Party to the 1951 Convention in the territory of which "a refugee has lawfully taken up residence" thus implies that this State has taken over responsibility for full protection of the refugee, including all the rights and advantages flowing from Articles 3 to 34 the 1951 Convention.

2. The 1980 European Agreement on Transfer of Responsibility for Refugees²⁶

Under Article 2 of the European Agreement on transfer of responsibility for refugees:

“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 with the agreement of its authorities or earlier if the second 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”.

From the date of transfer of responsibility:

“The responsibility of the first State to extend or renew the Travel Document of the refugee shall cease” and “The second State shall be responsible for issuing a new Travel Document to the refugee.” (Article 5.1)

"The second State shall inform the first State that transfer of responsibility has taken place" (Article 5.2)

The Agreement furthermore contains provisions clarifying the situation in relation to renewal and extension of Travel Documents and readmission until the transfer of responsibility has occurred.

2.1. Background

The adoption of the Agreement with its specific provisions relating to the conditions under which responsibility for issuing a Travel Document is transferred, was a response to the difficulties resulting from various interpretations of the expressions “lawfully staying”, “established lawful residence”, “resides lawfully” and “has lawfully taken up residence in the territory of another Contracting State” contained in Article 28 of the 1951 Convention and paragraphs 6 and 11 of its Schedule. The Executive Committee in its Conclusion 13 (XXIX) – 1978, had thus

(e) Recommended that, with a view to avoiding divergent interpretations of paragraphs 6 and 11 of the schedule and the resulting hardships to refugees, Contracting States make appropriate arrangements, including the adoption of bilateral or multilateral agreements, concerning the transfer of responsibility for the issue of Convention Travel Documents.²⁷

²⁶ European Agreement on transfer of responsibility for refugees, Strasbourg 16.10.1980, European Treaties Series no 107, further referred to as: European Agreement.

²⁷ See moreover the discussions and notes leading up to the adoption on ExCom Conclusions 12 (XXIX) and 13 (XXIX) and the explanation of the disputed terms and their meaning above.

The adoption of this Agreement was an attempt to strike a balance between conflicting interests of the first State, the second State and the refugee in regard to the allocation of responsibility for the issuing of Travel Documents. In the reasoning for initiating the drafting of the Agreement reference is made to the poor implementation of Paragraphs 6 and 11 of the Schedule to the 1951 Convention as well as to the:

Often conflicting interests between the country of first *asylum* and the country of second *asylum*. The country of first asylum, once the refugees have left, does not want them as a rule to come back, while the country of second asylum has an obvious interest in trying to return them if the refugees moving to that country become unemployed, or a public charge, or if they misbehave. The interest of the refugee is that the period of uncertainty should be as short as possible.²⁸

The Preamble to the European Agreement demonstrate the primary concern of the drafters to improve the situation for refugees who change their lawful residence from the State which issued their Travel Document to a second State. The Agreement includes provisions that are intended to facilitate and harmonise the implementation of the 1951 Convention in the context of the transfer of responsibility for the issuing of Convention Travel Documents:

Wishing to further improve the situation of refugees in Member States of the Council of Europe;
Desirous of facilitating the application of Article 28 of the Convention relating to the status of refugees of 28 July 1951 and paragraphs 6 and 11 of its Schedule, in particular as regards the situation where a refugee has lawfully taken up residence in the territory of another Contracting Party;
Concerned especially to specify, in a liberal and humanitarian spirit, the conditions on which the responsibility for issuing a Travel Document is transferred from one Contracting Party to another;
Considering that it is desirable to regulate this question in a uniform manner between the Member States of the Council of Europe

The introduction of a time frame of "two years of actual and continuous stay", which, in certain situations, is in fact a modification of the corresponding provisions of the 1951 Convention, was an attempt to define an objective criterion which, with certain specified exceptions, would imply that the refugee's purpose and intention was to remain resident in the second State.

The agreement has been signed and ratified by 12 states, including 10 EU Member States (Denmark; Finland; Germany; Italy; the Netherlands; Portugal; Romania, Spain; Sweden and the UK). It has been signed, but not ratified by 4 further EU Member States (Belgium, the Czech Republic, Greece and Luxembourg).

²⁸ "Report on the preparation of an agreement concerning the transfer of responsibility for refugees who move lawfully from one Member State to another", presented by the Committee on Population and Refugees, Parliamentary Assembly of the Council of Europe Doc. 3703 of 22 December 1975.

2.2. “Two years of actual and continuous stay”

The European Agreement established that transfer of responsibility takes place after two years of ‘actual and continuous stay in the Second State’, or earlier, if the second state has permitted the refugee to remain ‘either on a permanent basis, or for a period exceeding the validity of the Travel Document’. (Art 2.1). The two years start from date of admission or, if that is not known, from the date the refugee presents herself to the relevant authorities of the second state. Temporary periods outside the second state are not taken into account when calculating the total length of stay.

According to the Explanatory report on the European Agreement,

“the requirement of an actual and continuous stay was considered to be an objective criterion for judging the refugee’s intention to establish himself in the territory of the second State. The period of two years’ stay with the agreement of the State authorities was considered to be an objective criterion implicitly showing the willingness of the second State to allow the refugee to establish himself in its territory.”²⁹

However, in order to ensure that a transfer of responsibility reflects an intention on the side of the refugee to establish himself in the second State, lawful stays solely for the purposes of studies, training or medical care and periods of imprisonment and detention are not to be taken into account when calculating the period of two years.³⁰

In other words, the European states that have signed and ratified the Council of Europe Agreement appear to have three criteria for transferring the responsibility from the first signatory state:

1. Stay in the second state is not contrary to that state’s laws and regulations;
2. Stay in the second state normally needs to have been maintained for two years, including where relevant any short-term absences;
3. Stay in the second state, even if lawful and even if for a temporal period which in fact exceeds two years, should not have been for ‘non-connecting’ purposes, such as study or training, but should have been for employment or family related reasons, for example.³¹

²⁹ Paragraph 21 of the Explanatory Report on the European Agreement on Transfer of Responsibility for Refugees, which, together with the Agreement, was finalised by the Ad Hoc Committee on Legal Aspects of Territorial Asylum and Refugees in November 1979 on the basis of the discussions leading up to the adoption of the Agreement.

³⁰ See in relation to this the discussion above at 1.5.2. regarding the intentions of the drafters of the 1951 Convention to exclude from transfer stays admitted for limited time and purpose.

³¹ The implementation and usefulness of this Agreement are discussed in Part 2 of the report.

2.3. Scope of responsibility transferred on application of the European Agreement

The *scope* of responsibility transferred under the European Agreement is an issue that seems to need clarification, as in practice states apply varying interpretations and understandings of the extent of their obligations under this instrument. As will be seen below, some states maintain that the responsibility transferred under the Agreement involves only the responsibility for issuing Travel Documents in accordance with Article 28 of the 1951 Convention. Other states extend full protection rights under the 1951 Convention once transfer has been accepted and see the issuing of Travel Documents as only one element in their obligations under the European Agreement.

One could certainly argue that the scope of responsibility meant to be transferred under the European Agreement encompasses full protection and rights, and not merely the issuing of Travel Documents. This position finds support in both the wording of the title of the Agreement and by the preparatory works of the Agreement.

Without further qualification, the title of the Agreement simply refers to transfer of “responsibility for refugees”. In the reasoning for initiating the drafting of the Agreement reference is made to the poor implementation of Paragraphs 6 and 11 of the Schedule to the 1951 Convention as well as to the:³²

Often conflicting interests between the country of first *asylum* and the country of second *asylum*. The country of first asylum, once the refugees have left, does not want them as a rule to come back, while the country of second asylum has an obvious interest in trying to return them if the refugees moving to that country become unemployed, or a public charge, or if they misbehave. The interest of the refugee is that the period of uncertainty should be as short as possible.

The work leading to the drafting furthermore refers to the “obligation to issue a new Travel Document and *thus* undertake responsibility.”³³ It was also:³⁴

Judged important to ensure that the implementation of the provisions of the future Agreement does not result in a refugee being able neither to be readmitted to the First State nor considered as established in the Second State; in this respect the desire was for the provisions of the Agreement to allow in every case the resolving of which State will assume responsibility for the refugee.

³² “Report on the preparation of an agreement concerning the transfer of responsibility for refugees who move lawfully from one Member State to another”, presented by the Committee on Population and Refugees, Parliamentary Assembly of the Council of Europe Doc. 3703 of 22 December 1975.

³³ 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.

³⁴ 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) at II.

The determination of a specific time frame as contained in Article 2 (which is absent from the relevant provisions of the 1951 Convention), was included in the Agreement in order to allow greater distinction between refugees who move to another country with the intention of finally establishing themselves there and those who move without the same motivation.³⁵ The “desirability of facilitating the integration of the refugees into a new community” was moreover stressed as an argument for adopting an instrument with the aim of enhancing the practice and implementation of transfers.³⁶

The Explanatory Report to the Agreement finally, supports the argument that the scope of responsibility transferred under the European Agreement is not limited to that of issuing Travel Documents. In this report it is, in relation to Article 5, stated 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”.

At this stage, it is useful for comparative purposes to set out in summary form the details of the Agreement (for comparison with the table on the Convention and ExCom Notes and Conclusions above).

Table 2: The Council of Europe Agreement on the Transfer of Responsibility for Refugees.

Category	Position	Comments
Travel Document	Until responsibility is transferred, extension and renewal is the responsibility of the first State. Diplomatic missions and consular authorities may handle this.	Article 3.
Residence permit/status	Stay should be with the agreement of the authorities of the second State	Residence must be lawful Article 2.1
Employment	Stays for employment (with the exception of training) count toward the two years required residency.	Article 2.2.a

³⁵ See, for example, Report on the Fifth Meeting (Strasbourg, 5 to 9 March 1979) of the Ad Hoc Committee on Legal Aspects of Territorial Asylum and Refugees (Doc. No. CAHAR (79) 7 final)

³⁶ 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)

Study	Stays in second country solely for studies do not count toward the two years required residency.	Article 2.2.a
Transfer of responsibility from one EU Member State to another for issuing Travel Documents	<p>‘Responsibility’ is considered transferred after two years of continuous residence in the second State, or earlier if the second State has allowed the refugee to stay permanently or for a period that will outlast the validity of the Travel Document.</p> <p>‘Responsibility’ is also transferred if refugee can no longer be readmitted to the first country.</p> <p>Second State shall inform the first State when it assumes responsibility.</p>	<p>Article 2.1</p> <p>Article 2.3. In this case, responsibility is transferred almost de facto, it seems.</p> <p>Article 5.2.</p>
Family Reunification	After date of transfer of responsibility, the second State takes on responsibility for admitting family (spec. Spouse and minor/dependent children).	Article 6.
Transfer of protection under 1951 Convention beyond the issuing of Travel Documents	Responsibility for granting the refugee the rights and advantages flowing from the 1951 Convention is implicitly transferred to the second State following transfer of responsibility to issue Travel Documents	Explanatory Report at Article 5

The Council of Europe Agreement does not set out details of other rights that refugees have.

3. Bilateral Agreements

Prior to the adoption of the European Agreement on Transfer of Responsibility for Refugees in 1980, several European States had concluded bilateral agreements, which to

a large extent contain provisions on transfer of responsibility for the issuing of Travel Documents similar to those eventually adopted with the European Agreement:

- Austria – Benelux of 12 June 1964 on the Stay of Refugees within the Meaning of the 1951 Convention Relating to the Status of Refugees
- Austria – France of 21 October 1974 on the Stay of Refugees within the Meaning of the 1951 Convention Relating to the Status of Refugees
- Switzerland - Benelux of In 14 May 1964 on the movement of refugees
- Switzerland - Benelux of 14 May 1964 on the right of return of refugee workers
- Switzerland - France of 12 April 1960 on the Movement on Refugees,
- Switzerland - France of 12 April 1960 on the Right of Return of Refugee Workers

In accordance with Article 8 of the European Agreement the provisions of those agreements, which relate to transfer of responsibility cease to be applicable from the date on which the European Agreement has entered into force in both States party to the agreements.

4. Convention Status and Subsidiary Protection

To this point, reference has been made to the 1951 Convention and the status of refugee as determined under the application of that Convention. The question of whether the same criteria could or should apply to people with subsidiary protection is one which can and is answered in various ways by States.

Until now, no international or bilateral agreements have been concluded on transfer of protection for persons in need of subsidiary protection.

In its 2000 Communication, the European Commission noted that one of the “status options would be for the Member States to have at their disposal at least one form of subsidiary protection enabling a person to obtain this status while he would be able to obtain refugee status in another Member State and thus ensure that he will not be seriously penalised.” This was in advance of the proposed directive on the Qualification for Refugee Status, and the discussions on that proposal which resulted in a decision in March 2004. In the final directive, ‘a person eligible for subsidiary protection’ is defined as:³⁷

A third country national or stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm defined

³⁷ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (not yet published in OJ), further referred to as: Qualification Directive

in article 15, and to whom Article 17 paragraph 1 and 2 does not apply, and is unable, or owing to such risk, is unwilling to avail himself or herself of the protection of that country.³⁸

The United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons emphasised the need to consider protection of persons in refugee-like situations that did not easily fall within the scope of the refugee definition of Article 1 A (2) the 1951 Convention:

“E... Expresses the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides.”

This need for extension of protection and equal treatment to persons in need of subsidiary protection has continuously been repeated by UNHCR, including during the debates leading to the adoption of the Qualification Directive.

In considering the situation of people granted subsidiary protection, we should return to the two main questions, but adapt them for the purposes of this particular discussion:

1. Do the EU Member States, as part of the European integration process, want to ensure that all people who reside for long periods in the European Union have access to a right to freedom of movement for residence around the EU territory? Should they be distinguished from long-term resident third country nationals and refugees if the reason for their stay is a non-Convention protection need? Would that be discriminating?
2. People with subsidiary protection generally will not have a Convention Travel Document, as they do not fall under the Convention definition, but an Aliens Travel Document of some sort. This is the minimum norm set out in the Qualification Directive. As the individual has not been determined to be a refugee according to the Convention, the Schedule and Article 28 do not apply. Therefore, even taking up lawful residence in another state might not be a reason for that state to issue a new Aliens Travel Document. Might states wish to re-open an asylum case a situation in which a person with subsidiary protection in one Member State has taken up lawful residence for a non-protection related reason in a second Member State? Or might they consider the granting of subsidiary protection in the first Member State to be sufficient grounds for the second Member State to do likewise, and issue its own Aliens Travel Document to the protected individual?

³⁸ Article 15 defines ‘serious harm’ as death penalty or execution; torture or inhuman or degrading treatment or punishment; serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. Article 16 refers to cessation and Article 17 to exclusion.

In the context of the *proactive* potential of granting of free movement and residence rights to all people who are resident in the EU Member States for a lengthy period of time, decisions will need to be made. Member States might choose to exclude those people with subsidiary protection. However, they could also decide that the people concerned would benefit from greater inclusion in society, and could be given this theoretical right which, like EU citizens and long-term resident third country nationals, they may or may not actually use. To this extent, the decisions on the rights for refugees and persons granted subsidiary protection are similar. This does not mean necessarily that the decision has to be the same. The decision on where to draw the line might fall between refugees and those with subsidiary protection, dependent on how starkly the Member States want to contrast the two statuses.

As to the *reactive* transferring of protection, the substance of Article 28 and of the Schedule relating to Travel Documents clearly relates specifically to Convention refugees. In the Qualification Directive, Member States have explicitly not included those granted subsidiary protection within the scope of the granting of Convention Travel Documents, but have stipulated that these people can be granted a national Aliens Travel Document to permit them to travel. As these are not uniform across the EU, and are national in nature – ie linked specifically to the issuing state - the question of ‘re-issuing’ a Travel Document for someone with subsidiary protection does not arise. Member States would need to decide to formulate such a possibility.

Nonetheless, people with subsidiary protection may well find themselves in a situation in which they can or wish to take up lawful residence in a second Member State. This is unlikely to happen very often, as the empirical research for this study shows. When it does happen, however, if subsidiary protection status is non-transferable, the protected persons only recourse would seem to be to make a new application for protection (risking the refusal on the grounds that they had protection elsewhere).

Part 2 - Current Practice

In this Part of the report we set out the current practice of a number of EU Member States, plus Switzerland, and the refugee experience.

1. Description of existing systems for transfer of protection in place in Member States and Switzerland

Through country reports this part looks at the types of systems related to transfer of responsibility for protection currently existing in the fifteen Member States, which were part of the EU at the time of embarking on this study and the Slovak Republic, which was a candidate country when the main part of the research for this study was carried out, but is now a full Member of the EU. For comparative reasons, the situation in Switzerland is also included. The country reports cover the full range of their agreements, practices, criteria and scope, as well as procedures.

1.1 Countries using the European Agreement on Transfer of Responsibility for Refugees

Denmark³⁹

General introduction

Denmark ratified the European on Transfer of Responsibility for Refugees in 1984 and applies this instrument as well as the 1951 Convention Article 28 and its Schedule in cases of transfer. No bilateral agreements have been concluded with other States.

Denmark considers itself under an obligation to take over responsibility for the issuing of Convention travel documents alone and do not apply extraterritorial effect to the refugee status determination carried out by the first State of protection.

Denmark accepts transfer of responsibility in about 20 cases per year.

National legal basis

Article 28 of the 1951 Convention and paragraph 11 of its Schedule apply directly in cases of requests for transfer from refugees coming from States, which are not parties to the European Agreement. In cases of requests for transfer from refugees coming from States, which are parties to the European Agreement on Transfer of Responsibility for

³⁹ Research visit conducted in Copenhagen in March 2004

Refugees, this Agreement applies directly. The Immigration Service has issued detailed internal guidelines.

Level of transfers

Due to low numbers, no official statistics are kept on transfer of responsibility. According to rough estimates reported by the interviewees however, Denmark accepts transfer of responsibility for around 20 refugees each year. Most – if not all – of the caseload concerns refugees who have already obtained a residence permit in Denmark on basis of family links. The number of rejections is similarly low and concerns applications, which do not meet the criteria of either the 1951 Convention or the European Agreement.

Categories covered

Only cases of Convention refugees are eligible for transfer of responsibility to Denmark.

Criteria

Transfer under the European Agreement on transfer of Responsibility for Refugees of 1980

In accordance with Article 2 of the European Agreement, the criteria for accepting transfer of responsibility for refugees coming from a State of first protection, which is party to the European Agreement are:

- Recognition of Convention refugee status by another State party to the European Agreement *and*
- two years of actual and continuous stay (lawful residence) in Denmark in agreement of the Danish authorities or earlier if the second 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. The calculation of the period of stay takes account of the exceptions included in Article 2(2) of the European Agreement.⁴⁰

As Denmark considers transfer under the European Agreement to cover only responsibility for issuing travel documents (see below), questions relating to cessation, exclusion, cancellation and revocation of refugee status are irrelevant and therefore never considered. This is also the case for transfer outside the scope of the European Agreement.

Transfer outside the scope of the European Agreement on transfer of Responsibility

Article 28 and the Schedule of the 1951 Convention govern transfer from countries that are not parties to the European Agreement. Accordingly responsibility for issuing travel documents shall be transferred from the first State of protection to Denmark, in cases of:

⁴⁰ See Article 2(2) of the European Agreement

- Recognition of Convention refugee status by another State party to the 1951 Convention *and*
- Lawful residence in Denmark.

The refugee is considered to have lawful residence in Denmark if he has been issued with a residence permit under the Danish Aliens Act and is registered with the National Registration Office.

Transfer of responsibility for the issuing of travel documents may thus happen earlier than in cases of refugees whose first State of protection is party to the European Agreement.

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

Denmark does not apply extraterritorial effect to refugee status determination carried out by a first State of protection. Accordingly, the refugee for whom Denmark has accepted transfer of responsibility for issuing travel documents will only get the status in Denmark as was relevant for the obtaining of a residence permit, e.g. a third country national with family links in Denmark, but not refugee status as such. The refugee is informed accordingly. In accordance with internal guidelines and in order to make it clear that residence permit is not granted on basis of asylum rules, Convention Travel Documents issued on basis of transfer of responsibility are affixed with a note explicitly stating the basis upon which the residence permit was issued by Denmark. The Travel Document does not carry a note explicitly stating that the person's refugee status has not been recognised or confirmed by Denmark.

If a refugee for whom Denmark has accepted responsibility for issuing travel documents wants his refugee status recognised by Denmark, he needs to lodge a separate application for asylum. The Immigration Service will examine this application in accordance with regular refugee status determination and asylum procedures. The fact that the person has been recognised by another State will be taken into consideration, but is not decisive for the outcome if the Danish authorities do not consider the applicant (still) to be at risk of persecution in his country of origin. If the application for refugee status is refused by the Danish authorities, the refugee will nevertheless keep the right to be issued with Danish Convention Travel Documents as long as he goes on lawfully residing in Denmark.

Level of protection granted

Rights and benefits beyond the issuance of the travel document are limited to those connected to the status on the basis of which the residence permit of the refugee in question was issued prior to transfer. This is due to the fact that in absence of explicit

provisions to the contrary, Denmark considers transfer as referring only to the travel document and not to responsibility for the full protection of the refugee.

As the responsibility for the issuance of travel documents in cases of transfer is seen as linked to and dependent on (the continued) possession of a residence permit, Denmark considers that the first State of protection in principle would have to be held responsible where, for example, the refugee loses his right of residence in Denmark. In those cases the travel document will be withdrawn or renewal refused and the refugee ordered to leave Denmark. Simultaneously, however, the refugee will be counselled of the possibility to apply for asylum in Denmark if he fears that expulsion will imply direct or indirect refoulement. In those cases an application will be examined under regular asylum procedures and not in light of cessation clauses.

Transfer outside the scope of the European Agreement on transfer of Responsibility

Recognition of refugee status

As for under the European Agreement.

Level of protection granted

As for under the European Agreement.

Procedures applied and effects

An application for transfer of responsibility must be presented to the Danish Immigration Service (the central authority competent in asylum matters), together with the travel document issued by the first State of protection, proof of lawful residence in Denmark and a statement from the National Registration Office, confirming actual residence in Denmark. The Immigration Service will examine the application and make a decision.

On acceptance of transfer, the Danish Immigration Service will issue a Convention Travel Document valid for five years.

Decisions regarding refusing the issuance of Convention Travel Documents may be appealed to the Danish Refugee Appeals Board (the second instance central authority competent in asylum matters).

There are no provisions or guidelines specifically relating to the transfer of protection status of minors.

Arrangements with first country of protection

If accepted, the first country of protection will be notified of the transfer of responsibility by way of the return of the travel document, which was issued by that country. The

country of first protection will not be informed that Denmark considers it to continue being responsible for the protection of the refugee beyond the issuance of travel documents.

Role of UNHCR, other international organisations and NGOs

None

Summary

Ratification of European Agreement of 1980		17 January 1984				
<i>Bilateral agreements</i>		None				
<i>Policy maker</i>		Ministry of Integration				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		European Agreement Article 28 of the 1951 Convention and its Schedule. Internal guidelines (“asylmeddelelse ”)				
<i>Main criteria</i>	<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>				
	- Convention refugee - two years of actual and continuous stay in Denmark in agreement with the Danish authorities <i>or</i> earlier if Denmark has permitted the refugee to remain in its territory <i>either</i> on a permanent basis <i>or</i> for a period exceeding the validity of the travel document, cf. Article 2 of the European Agreement.	- Convention refugee - Lawful residence				
<i>Procedures</i>		First instance: Danish Immigration Service Appeal: Refugee Appeals Board				
<i>Scope of transfer</i>		<i>Under European Agreement</i>		<i>Outside scope of European Agreement</i>		
	<i>Recognition of refugee status</i>	No		No		
	<i>Responsibility for issuing travel documents</i>	Yes		Yes		
	<i>Full protection under the 1951 Convention</i>	No		No		
<i>Statistics</i>		1999	2000	2001	2002	2003
		± 20	± 20	± 20	± 20	± 20

Finland⁴¹

General introduction

On ratification of the 1951 Convention, Finland made a reservation to Article 28. Accordingly, the provisions of the Schedule relating to transfer of responsibility for the issuance of travel documents are not applicable. Finland is currently in the process of negotiating the lifting of this reservation. Finland ratified the European Agreement on Transfer of Responsibility for Refugees in 1990, and applies this instrument to transfer of responsibility for refugees coming from States of first protection, which are parties to this Agreement. No additional bilateral agreements have been concluded. Finland has no policy or practice relating to transfer of responsibility for refugees outside the scope of the European Agreement, and requests for travel documents from refugees recognised by States which are not parties to the European Agreement would be dealt with in accordance with the general provisions of the Finnish Aliens Act, i.e. through full refugee status determination procedures.

Finland has dealt with very few cases concerning transfer of responsibility all of which have concerned applications from refugees wishing to transfer from States of first protection, which were parties to the European Agreement.

National legal basis

The European Agreement on Transfer of Responsibility was transposed into national law by of a Decree of 24 August 1990.

Categories covered

Finland only considers transfer of protection status in relation to refugees recognised under the 1951 1951 Convention.

Level of transfers

There have only been very few cases of transfer in Finland since the ratification of the European Agreement in 1990. Due to the low numbers, Finland does not keep statistics.

Criteria

Transfer under the European Agreement on transfer of Responsibility of 1980

In accordance with Article 2 of the European Agreement, the criteria for accepting transfer of responsibility for refugees are:

⁴¹ Questionnaire completed by Finnish authorities in February 2004

- Recognition of Convention refugee status by another State party to the European Agreement *and*
- two years of actual and continuous stay in Finland in agreement of the Finnish authorities or earlier if Finland 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. The calculation of the period of stay is done in accordance with Article 2(2) of the European Agreement.

Questions of cessation, exclusion, cancellation or revocation would be considered on a case by case basis, but have not yet arisen.

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

On ratification of the 1951 Convention, Finland made a reservation to Article 28 and the provisions of the 1951 Convention and its Schedule relating to the transfer of responsibility therefore not applicable in Finnish law. Although in practice Finland have nevertheless been issuing Convention Travel Documents to refugees recognised under regular Finnish refugee status and asylum procedures, a similar practice has not developed with respect to transfer of responsibility outside the scope of the European Agreement. Accordingly transfer would be denied in these cases and requests for travel documents from refugees recognised by States, which are not parties to the European Agreement, would be dealt with through full refugee status determination procedure.

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

Generally adhering to UNHCR Executive Committee Conclusions, extraterritorial effect will be applied to refugee status determination carried out by another State party to the 1951 Convention.

Level of protection granted

From the date responsibility is transferred, Finland considers itself responsible for granting full protection under the 1951 Convention. Accordingly, refugees who have transferred under the European Agreement are entitled to the same rights, benefits and other aspects of protection as refugees recognised under regular Finnish refugee status and asylum procedures.

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

N/A

Procedures applied and effects

The Directorate of Immigration (the central authority competent in asylum matters) is responsible for examining and deciding on requests for transfer of responsibility for refugees.

According to Article 6 of the Finnish Aliens Act, an alien must submit any travel document he has before being issued with a Convention Travel Document by the Finnish authorities. Specific guidelines relating to the kind of documentation (otherwise) required by the refugee in cases of transfer of responsibility do not exist and requests will be dealt with on a case by case basis.

On acceptance of transfer of responsibility, the Directorate of Immigration will issue a Convention Travel Document. Convention Travel Documents may be issued for a maximum period of ten years.⁴² The Travel Document will not contain any reference neither to the transfer of responsibility, which has taken place, nor to former State of protection. The refugee status of the holder will be specified in the residence permit.

Decisions by the Directorate of Immigration regarding refusal of accepting transfer of responsibility may be appealed to the regional Administrative Court. A decision of the Administrative Court may be appealed to the Supreme Administrative Court if this Court grant leave to appeal (only if the case concerns issues of principles of importance to case law or for other weighty reasons).

There are no provisions or guidelines relating specifically to the transfer of protection status of minors.

Arrangements with first country of protection

If accepted, the transfer of responsibility is brought to the attention of the first State of protection, but the travel documents issued by the first state are not returned.

Role of UNHCR, other international organisations and NGOs

None.

⁴² Although Finland has made a reservation to Article 28 of the 1951 Convention, Convention Travel Documents are in practice being issued to refugees in Finland

Summary

<i>Ratification of European Agreement of 1980</i>		24 August 1990				
<i>Policy maker</i>		The Refugee and Asylum Affairs Unit under the Immigration Department Unit of the Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Subsidiary protected persons</i>	No				
<i>National legal basis</i>		European Agreement as implemented by Decree of 24 August 1990				
<i>Main criteria</i>		Under European Agreement			<i>Outside scope of European Agreement</i>	
		- Convention refugee - two years of actual and continuous stay in Finland in agreement with the Finnish authorities <i>or</i> earlier if Finland has permitted the refugee to remain in its territory <i>either</i> on a permanent basis <i>or</i> for a period exceeding the validity of the travel document, cf. Article 2 of the European Agreement.			N/A	
<i>Procedures</i>		1 st Instance: Directorate of Immigration. Appeal: Regional Administrative Court; Supreme Administrative Court if the court grants leave to appeal in exceptional cases				
<i>Scope of transfer</i>		<i>Under European Agreement</i>			<i>Outside scope of European Agreement</i>	
	<i>Extraterritorial recognition of refugee status</i>	Yes			N/A	
	<i>Responsibility for issuing of travel documents</i>	Yes			N/A	
	<i>Full protection under the 1951 Convention</i>	Yes			N/A	
<i>Statistics (not available)</i>		1999	2000	2001	2002	2003
		-	-	-	-	-

Germany⁴³

General introduction

Transfer of responsibility for refugees is governed by Article 28 of the 1951 Convention and its Schedule, and by The European Agreement on Transfer of Responsibility, the latter of which was ratified by Germany in 1994 and entered into force on 1 March 1995. At the time of ratification, Germany already applied the provisions relating to transfer of responsibility of the 1951 Convention. The main reason for Germany to ratify the European Agreement was to support harmonisation throughout Europe. Germany attaches importance to the goal of having clear and efficient provisions on determining responsibility for the issuing of travel documents to refugees who move across borders.

In practice, Germany does not distinguish between refugees coming from States party to the European Agreement on Transfer of Responsibility for Refugees, and refugees who come from other States of first protection. In both instances, Germany will normally take full responsibility for the protection of the refugee under the 1951 Convention and issue a Convention Travel Document already at the time of the initial granting of a residence permit under the Aliens Act to a refugee recognised by another State party to the 1951 Convention.

Germany has little experience with transfer of protection cases and no statistics are available. For this reason and due to the decentralisation of competence to the Federal States, there exists no clear picture of practice on transfer of responsibility in all its particulars.

National legal basis

The European Agreement on Transfer of Responsibility for Refugees, Article 28 of the 1951 Convention and the relevant provisions of the Schedule are directly applicable in German national law. A thorough report on the European Agreement was submitted to Parliament by the German Government during the preparation of legislative measures leading to its ratification.

Level of transfers

Cases of transfer of responsibility are most often dealt with by the Federal States (Länder) in connection with the examination of an application for residence permit (on grounds other than that of being granted asylum) lodged by a refugee. No central or local registration of the fact that the issuing of Convention Travel Documents in those cases are in fact based on transfer of responsibility for the refugee from another State is made. It is therefore not possible to estimate numbers, which are, however, assumed to be low.

⁴³ Research visit conducted to Berlin in February 2004

Categories covered

The provisions on transfer of protection responsibilities cover only *Convention* refugees.

Germany does not apply extraterritorial effect to decisions made by other States, determining need of subsidiary protection because it sees no effective harmonisation of standards in this category. Adjudication of protection status in those cases would normally only be restarted upon the explicit request of the person concerned. In the event of a deportation order being issued, the Federal Office for the Recognition of Foreign Refugees or, if no application for asylum has been lodged, the Aliens Authorities, would, however, ex-officio have to examine whether expulsion would be in violation of the principles of non-refoulement of the 1951 Convention and/or Article 3 the European Convention on Human Rights or of its Protocol on death penalty.

Criteria

Transfer under the European Agreement on transfer of Responsibility of 1980

In practice, Germany generally does not apply the more strict criteria of the European Agreement, which in addition to recognition of Convention refugee status by another State party to the European Agreement normally would normally require two years of actual and continuous stay in Germany with the agreement of the German authorities. In line with the “lawful residence” criteria of paragraph 11 of the Schedule, normally take place already in connection with establishment of:

- Recognition of Convention refugee status by another State party to the 1951 Convention *and*
- Lawful residence in Germany.

The competence to decide on how to apply the provisions on transfer in all particulars lies with the local aliens authorities of the Federal States (Länder) rather than with the central federal authorities. This and the presumed little practical importance in terms of numbers means that it is not possible to give a detailed account in all particulars of the how the Agreement is being applied in Germany, for example to which extent exceptions to acceptance of transfer might be made where lawful residence in Germany is solely obtained for purposes of limited or short term stays such as studies.

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

As for under the European Agreement.

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

Germany applies extraterritorial effect to refugee status determination carried out by another State party to the 1951 Convention.

Cessation of refugee status in those cases is explicitly regulated by Article 73a in conjunction with Article 72 and 73 of the German Law on Asylum Procedures. Under these provisions it is stipulated that the legal status as a refugee in Germany of a person who has been recognised as a refugee within the meaning of the 1951 Convention by another country and for whom responsibility for issuing travel documents has been transferred to Germany, shall expire if one of the cessation clauses of Article 1 C of the 1951 Convention applies. Questions of cessation, exclusion, cancellation and revocation are not examined automatically but only in the presence of concrete indications that one of these clauses may be applicable.

Level of protection granted

Germany considers itself being fully responsible for the protection of a refugee for whom responsibility for issuing travel document has been transferred to Germany. Thus all rights and benefits of the 1951 Convention are granted to those refugees on a par with refugees whose refugee status has initially been recognised by Germany. Article 51 (2) in conjunction with Article 51 (1) of the German Aliens Act explicitly prohibits expulsion of aliens recognised as Convention refugees by other States.

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

As for under the European Agreement.

Level of protection granted

As for under the European Agreement.

Procedures applied and effects

Decisions on transfer of responsibility for the issuance of travel documents is within the competence of the local Aliens Authority of the Federal States (Länder). It is also the local Aliens Authority, which has the competence to issue residence permits to aliens in general. The Federal Office for the Recognition of Foreign Refugees decides questions relating to cessation and withdrawal of refugee status.

Possession of a valid Convention Travel Document issued by another State party to the 1951 Convention or any other document proving his status as a Convention refugee is accepted as basis for transfer of responsibility. In principle, no further checks on the person's refugee status are made in connection with such a transfer.

The question of transfer of responsibility is usually examined in conjunction with the refugee's application for a residence permit in Germany. In these cases a separate application for transfer of responsibility is not requested, and the Aliens Authority will issue a German Convention Travel Document at the same time as granting of residence permit (in connection with the application of which the refugee has already presented the Convention Travel Document, which was issued by the first State of protection, thus documenting his refugee status). A Convention Travel Document issued by Germany is valid for ten years at the time in cases of adults and five years for minors. Transferred aliens are initially given a (generally restricted) residence permit, which may be extended. Germany furthermore issues a new refugee identity card on the basis of the foreign decision granting such status.

Negative decisions may be appealed to the administrative tribunals. If the case is of particular importance and interest the applicant may be granted exceptional leave to appeal the decision of a administrative tribunal to the Upper Administrative Court.

Arrangements with first country of protection

Travel documents issued by the first country of protection will be returned if a request to this effect is stated in the document.

Role of UNHCR, other international organisations and NGOs

In the course of the procedures, the UNHCR may be consulted if doubts concerning refugee status persist in a specific case.

Summary

<i>Ratification of European Agreement of 1980</i>		Signed in 1980 and ratified 30 September 1994				
<i>Policy maker</i>		Department M (Aliens, Refugees and European Harmonisation), Federal Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		European Agreement 1951 Convention and Schedule Aliens Act				
<i>Main criteria</i> ⁴⁴		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		- Convention status - Lawful residence	- Convention status - Lawful residence			
<i>Procedures</i>		First instance: Aliens Authority of the Federal States (Länder) Appeal: Administrative tribunals; in certain cases to The Upper Administrative Court				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	Yes	Yes			
	<i>Responsibility for issuing travel documents</i>	Yes	Yes			
	<i>Full protection under the 1951 Convention</i>	Yes	Yes			
<i>Statistics – no statistics available</i>		1999	2000	2001	2002	2003
		-	-	-	-	-

⁴⁴ It is not clear whether – or to which extent - exceptions are made in practice where lawful residence is obtained for short term purposes

Italy⁴⁵

General introduction

Italy ratified the *European Agreement on Transfer of Protection* in 1985. Practice is very limited. To date applications have only been made by people wishing to transfer from other State parties to the European Agreement.

National legal basis

No implementing legislation or guidelines have been adopted and the European Agreement is applied directly on a case to case basis.

Categories covered

Italy only considers transfer of protection status in relation to refugees recognised under the 1951 Convention.

Level of transfers

In the course of eight years, from 1996 to 2003, Italy has accepted transfer of responsibility for refugees in three cases. The countries of previous protection were France (one Somali case) and Germany (two Romanian cases). In all three cases the refugees had initially obtained a residence permit in Italy for work purposes.

It is known that some refugees who have initially been recognised and granted asylum in Italy subsequently move on to other EU member states.

Due to the limited numbers, Italy does not keep official statistics on transfer of responsibility for refugees.

Criteria

Transfer from states parties to the European Agreement on transfer of Responsibility for Refugees of 1980

Italy applies the criteria of the European Agreement to applications for transfer, submitted by refugees who had been granted asylum in another State Party to the Agreement prior to a obtaining residence permit in Italy. Two years of residence in Italy will therefore normally be the condition for transfer. The calculation of the period of stay takes account of the exceptions included in the European Agreement.⁴⁶ Theoretically transfer can take place earlier either if the travel document issued by the former state of protection has expired or if the refugee obtains a permanent residence permit in Italy prior to the expiry of the two years time limit. The latter has not been the case in practice.

⁴⁵ Research visit conducted to Rome in February 2004

⁴⁶ See Article 2(2) of this Agreement

Residence permits may only be issued to aliens if the alien in question does not pose a threat to national security and public safety. As transfer to Italy may only take place on the basis of previous residence in Italy, it has in practice already been established that the refugee does not threaten public safety and a re-examination of this question does not take place when transfer is requested.

Transfer from states *not* parties to the European Agreement

No applications to date. No guidelines have been issued, but in the event that such a case arises, those interviewed indicated that Italy would honour its international obligations and apply the relevant criteria of the Schedule to the 1951 Convention.

Scope of transfer

Transfer from State parties to the European Agreement on transfer of Responsibility for Refugees

Recognition of refugee status

Italy adheres to the ExCom Conclusion No. 12 (XXIX) and applies extraterritorial effect to refugee status determination carried out by another State Party to the European Agreement. In cases where Italy accepts responsibility for issuing travel documents under the European Agreement, the refugees are automatically and without any examination of the grounds for requesting protection, considered Convention refugees on a par with refugees recognised under the Italian refugee status determination procedure.

The Italian authorities will not normally examine requests for transfer in the light of cessation or exclusion clauses unless the case shows obvious indications that exclusion or cessation might be applicable. In practice this has not yet arisen.

Level of protection granted

From the date responsibility is transferred to Italy under the European Agreement, Italy considers itself responsible for granting full protection under the 1951 Convention. Accordingly, refugees who have transferred under the European Agreement are entitled to the same rights, benefits and other aspects of protection as refugees granted asylum on basis of refugee status determination carried out by the Italian authorities. Thus, Italy does not expect the first country of protection to retain any responsibility towards the refugee, once transfer has taken place.

Transfer from States not parties to the European Agreement on Transfer of Responsibility

No national legislation, guidelines or case-law.

Procedures applied and effects

Recognition of refugee status and the granting of residence permit to refugees are generally dealt with as two separate issues in Italy. Refugee status determination lies - in the first instance - with the Central Commission for the Recognition of Refugee Status whereas the competence to grant residence permits and issue travel documents lies with the General Directorate for Border police and Immigration of the Police Department. Both are under the Ministry of Interior.

An application for transfer of responsibility under the European Agreement should be lodged with the local police authority. The police submit the application to the Department of Civil Liberties and Migration of the Ministry of Interior, requesting its advice as to whether the criteria for transfer of responsibility under the European Agreement are fulfilled. If the Department of Migration consider that the conditions for transfer are met, the police issue a Convention Travel Document to the refugee as well as a residence permit for refugees. The Central Commission for the Recognition of Refugee Status is informed of the decision.

If the application is rejected, the decision may be appealed through the administrative court system. It is up to the courts to decide whether the appeal shall have suspensive effect on any order to leave the country.

Arrangements with the first country of protection

The country of previous protection will not be contacted during the examination of the request for a transfer, but will, in accordance with Article 5 of the European Agreement, be notified if and when Italy accepts transfer of responsibility. Similarly, travel documents issued by the first country of protection will normally be returned.

Role of UNHCR, other international organisations and NGOs

None

Summary

<i>Ratification of European Agreement of 1980</i>		8 November 1985 taking effect from 1 January 1986				
<i>Policy maker</i>		Asylum and Policy Section, Department of Civil Liberties and Migration, Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Subsidiary protected persons</i>	No				
<i>National legal basis</i>		European Agreement directly				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		On expiry of a period of two years of residence or earlier if refugee has been permitted to remain either on a permanent basis or for a period exceeding the validity of the travel document issued by the first state (Article 2 (1) and (2) of the European Agreement)	Not clarified under existing case-law and legislation			
<i>Procedures</i>		1 st Instance: Travel document and residence permit for refugees are issued by local police on recommendation relating to transfer done by the Dpt. of Civil Liberties and Migration of the Ministry of Interior. Central Commission for the Recognition of Refugee Status is informed of decision Appeal: Administrative court system				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	Yes	Not clarified under existing case-law and legislation			
	<i>Issuing of travel documents</i>	Yes	Not clarified under existing case-law and legislation			
	<i>Extension of full protection</i>	Yes	Not clarified under existing case-law and legislation			
<i>Statistics</i>		1999	2000	2001	2002	2003
A total of three cases over 8 years						

The Netherlands⁴⁷

General introduction

Transfer of protection status is primarily governed by the European Agreement on Transfer of Protection, which the Netherlands signed in 1981 and ratified in 1985.

The Netherlands has concluded two bilateral agreements in this field. One was concluded in 1964 between the Benelux and Austria on the Stay of Refugees within the Meaning of the 1951 Convention relating to the Status of Refugees. The principles and criteria are largely identical with those of the European Agreement. In 1964 a bilateral agreement was also concluded between Switzerland and the Benelux, on the movement of refugees and Agreement of 14 May 1964 on the right of return of refugee workers. In accordance with Article 8 of the European Agreement the provisions of this agreement relating to transfer of responsibility ceased to be applicable from 1 March 1986, on which date the European Agreement had entered into force in both Switzerland and the Netherlands.

Transfer of responsibility for refugees to the Netherlands outside the scope of the European Agreement and the bilateral agreement concluded between Benelux and Austria is not regulated.

Practice is unclear. As statistics are not kept there is very little accurate knowledge of practice within this field beyond a presumption that numbers dealt with by the Dublin Bureau (which is competent in these matters) of the Immigration and Nationality Department (IND) are very small. Furthermore, it has lately appeared that the department under IND, concerned with facilitating deportation of aliens might in fact have erroneously been dealing with the deportation of refugees whose cases - in the first place - ought to have been examined under the either the European Agreement or one of the bilateral agreements.

National legal basis

The European Agreement on Transfer of Responsibility for Refugees as well as the bilateral agreements entered by the Netherlands is directly applicable in national law. Guidelines are issued in the Vreemdelingen Circulaire.

Level of transfers

Statistics are not kept and applications for transfer may be with by different departments of the Immigration and Nationality Department (IND). There is therefore very little accurate knowledge of the extent of practice in the Netherlands. The presumption is that numbers are very small.

⁴⁷ Research visit conducted in January 2004 in The Hague

A survey conducted within the IND shows that from October 2002 to October 2003, the Netherlands dealt with seven applications for transfer of responsibility to the Netherlands. Of those the Netherlands accepted responsibility in two cases, four were rejected and the outcome of one is unknown. During the same period the Netherlands dealt with six requests for transfer of responsibility to other countries. Of those a second State accepted one.

Categories covered

Only *Convention* refugees are accepted for transfer of protection under the European Agreement and the bilateral agreements concluded by the Netherlands.

Criteria

Transfer under the European Agreement on transfer of Responsibility of 1980

The criteria for accepting transfer of responsibility for refugees are in accordance with Article 2 of the European Agreement:

- Recognition of Convention refugee status by another State party to the European Agreement *and*
- Two years of actual and continuous stay in the Netherlands in agreement of the Dutch authorities or earlier if the Netherlands have permitted the refugee to remain in its territory either on a permanent basis or for a period exceeding the validity of the travel document. The calculation of the period of stay takes account of the exceptions included in the European Agreement.⁴⁸

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

There is no legal framework or any guidelines governing transfer of responsibility for refugees who come from a country of first protection, which is not party to the European Agreement or to one of the bilateral agreements concluded by the Netherlands. There seems to be no known case-law and the presumption is that requests for transfer in those cases will be rejected and the refugee obliged to obtain travel documents from the country in which he was recognised as a refugee.

⁴⁸ See Article 2 (2) of the European Agreement

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

The Netherlands adheres to the UNHCR Executive Committee Conclusion No. 12 (XXIX) and should therefore in principle apply extraterritorial effect to determination of refugee status carried out by another State Party to the European Agreement. The Vremdelingen Circulaire does not touch directly upon the question.

Questions of cessation, exclusion, revocation or cancellation of refugee status will only be examined on an exceptional basis and in the event that there are concrete indications that refugee status may no longer be warranted according to the general provisions of Dutch asylum law.

Level of protection granted

On acceptance of transfer of responsibility for issuing travel documents, the refugee will be granted the same rights and benefits - and be subject to the same obligations - as refugees who have been recognised and granted asylum under regular asylum procedures in the Netherlands.

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

N/A

Level of protection granted

N/A

Procedures applied and effects

The Immigration and Naturalisation Department (IND) which is the central authority competent in asylum matters is responsible for deciding on requests for transfer of responsibility under the European Agreement and bilateral agreements. An application for transfer of responsibility has to be lodged with the IND directly. If the refugee invokes the Council of Europe Agreement, he will be asked to fill in a form M35-H (application for admission as a refugee). The application will be examined through the Dublin Bureau under the IND. Normally the travel document issued by the first State of protection together with the residence permit issued in the Netherlands will be used as basis for the decision. An identity card could also be part of the documentation.

On acceptance of responsibility the IND issues a Dutch Convention Travel Document to the refugee. This document will contain no references to the fact that transfer has taken place nor to the name of the first country of protection.

In case of refusal, the decision of IND may be appealed to the courts in accordance with the procedures that exist in ordinary asylum cases. Suspensive effect of the appeal on any deportation order would probably be applied to those cases, but the guidelines are not clear.

Theoretically an application for transfer may be lodged from outside as well as from within the Netherlands. In practice, however, since the provisions on protected entry have been abolished, it may in fact be impossible to lodge such an application at any representation. In any event, it is difficult to imagine the granting of transfer to any application submitted from abroad as transfer normally requires two years of residence in the Netherlands.

Arrangements with first country of protection

If transfer of responsibility is accepted, the IND informs the embassy of the first State of protection accordingly and returns the documents issued by that state.

Role of UNHCR, other international organisations and NGOs

None

Summary

<i>Ratification of European Agreement of 1980</i>		Ratified on 7 March 1985				
<i>Bilateral Agreements</i>		Benelux-Austria of 12 June 1964 on the Stay of Refugees within the Meaning of the 1951 Convention relating to the Status of Refugees				
<i>Policy maker</i>		Immigration Policy Department, Ministry of Justice				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		European Agreement on Transfer of Responsibility for Refugees Bilateral Agreement between Benelux and Austria Vremdelingen Circulere (6/27 Internationale regelingen betreffende het verblijf van verdragsvluchtelingen)				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		Convention refugee - two years of actual and continuous stay in the Netherlands in agreement with the Dutch authorities ⁴⁹ <i>or</i> - earlier if the Netherlands have permitted the refugee to remain in its territory either on a permanent basis or for a period exceeding the validity of the travel document, cf. Article 2 of the European Agreement.	N/A			
<i>Procedures</i>		First instance: Dublin Bureau of IND Appeal: Courts, cf. ordinary asylum cases				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Recognition of refugee status</i>	Yes	N/A			
	<i>Responsibility for issuing travel documents</i>	Yes	N/A			
	<i>Full protection under the 1951 Convention</i>	Yes	N/A			
<i>Statistics</i>		1999	2000	2001	2002	2003
		-	-	-	-	2

⁴⁹The calculation of the period of stay takes account of the exceptions included in the European Agreement Article 2(2)

Portugal⁵⁰

General introduction

The European Agreement on Transfer of Responsibility for Refugees was signed by Portugal in 1980 and ratified in 1982. The European Agreement is directly applicable in Portuguese national law. There is no legal basis for transfer of responsibility outside the scope of the European Agreement.

Portugal has no practical experience in dealing with transfer of protection status as no requests for transfer to Portugal have been lodged and no information has been received from other States concerning transfers from Portugal to other countries.

National legal basis

In accordance with the Portuguese Constitution, the European Agreement became part of national law upon publication in the Portuguese Official Journal. No additional implementing legislation or guidelines have been adopted or issued concerning the application of the Agreement, and it is foreseen that the procedure applicable to resettlement cases will also apply in the cases of transfer of responsibility under the European Agreement.

Level of transfers

No applications for transfer of responsibility under the European Agreement have been lodged so far. There is no information available on possible transfers from Portugal to other EU Member States.

Categories covered

Only cases of *Convention* refugees are eligible for transfer of responsibility to Portugal.

Criteria

Transfer under the European Agreement on transfer of Responsibility of 1980

In accordance with Article 2 of the European Agreement, the criteria for accepting transfer of responsibility for refugees coming from a State of first protection, which is party to the European Agreement are:

- Recognition of Convention refugee status by another State party to the European Agreement *and*
- two years of actual and continuous stay in Portugal in agreement of the Portuguese authorities or earlier if Portugal has permitted the refugee to remain in its territory

⁵⁰ Questionnaire completed in January 2004

either on a permanent basis or for a period exceeding the validity of the travel document. The calculation of the period of stay will take into account the exceptions included in the European Agreement.⁵¹

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

In Portuguese law, there is no legal basis for transfer of responsibility outside the scope of the European Agreement.

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

Portugal adheres to the Executive Committee Conclusion No. 12 (XXIX) and applies extraterritorial effect to refugee status determination carried out by another State Party to the 1951 Convention. Accordingly, extraterritorial effect would potentially also be applied to cases in which Portugal accepts transfer of responsibility under the European Agreement. The persons interviewed for this study stated however that once a request for transfer of responsibility under the European Agreement is lodged, Portugal would establish contacts with the first State of protection in order to obtain information about the refugee's situation and "probably" also the grounds for granting asylum. The extent to which this might indicate a substantive examination of the grounds for recognising refugee status in the first place is not clear.

In principle, once a transfer is accepted, Portugal would regulate cessation and exclusion in accordance with national legislation and Article 1C of the 1951 Convention as these provisions apply to recognised refugees in general.

Level of protection granted

The Portuguese authorities find that the European Agreement is unclear in relation to the question of the scope of responsibility transferred under this instrument. It is however the position of Portugal that on acceptance of responsibility for issuing travel documents, the second State should be responsible for granting the refugee all the rights and benefits flowing from the 1951 Convention and thus extend to him the same the legal rights and protection as is extended to refugees, which are initially recognised by that country.

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

N/A

⁵¹ Article 2(2)

Procedures applied and effects

There is no specific provision in the national legislation concerning procedures to be applied in cases of transfer, and the procedure to be followed would be the one, which is prescribed for resettlement cases.

An application for transfer would have to be lodged in writing with the General Director of the Aliens and Borders Service (which is the central authority competent in matters relating to registration and admissibility of asylum claims as well as for the issuing of travel documents) under the Ministry of Interior.

The Asylum and Refugee Department of the Aliens and Border Service will analyse the request and establish contact with the state that granted the refugee status in order to assess any questions relating to the refugees situation. A report together with a recommendation will be prepared and submitted to the Minister of Interior, who will decide on the request. The National Commissioner for Refugees, the central authority dealing with and advising the Minister of Interior on matters relating to determination of refugee status and subsidiary protection, would not be involved in cases of transfer of responsibility.

The authorities would use any documentation attesting the recognition of refugee status as confirmed by information retrieved through contacts contact with the authorities of the first country of protection as basis for a decision.

If transfer of responsibility is accepted, a refugee identity card will be issued, which replaces the residence permit. It is valid for five years and renewable for a five-year period. The Aliens and Border Department will issue a Convention Travel Document, which is valid for one year at the time, but renewable. The Convention Travel Document would contain no references to the transfer of responsibility, which had taken place or to the country of first protection.

A negative decision may be appealed to the Administrative Courts.

Arrangements with first country of protection

Once a request for transfer of responsibility under the European Agreement is lodged, Portugal would establish contacts with the first State of protection in order to obtain information about the refugee's situation and probably also the grounds for granting asylum.

If Portugal accepts transfer of responsibility, the first State of protection will be notified accordingly and any documents issued by that State returned on request.

Role of UNHCR, other international organisations and NGOs

None

Summary

<i>Ratification of European Agreement of 1980</i>		10 March 1982				
<i>Policy maker</i>		Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		European Agreement directly				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		- Convention refugee - two years of actual and continuous stay in Portugal in agreement with the Portuguese authorities <i>or</i> earlier if the Portugal has permitted the refugee to remain in its territory <i>either</i> on a permanent basis <i>or</i> for a period exceeding the validity of the travel document, cf. Article 2(1) and (2) of the European Agreement.	N/A			
<i>Procedures</i>		First instance: Application lodged with and examined by the Aliens and Borders Service. Decision by the Minister of Interior on basis of proposal by the Aliens and Border Service Appeal: The Administrative Courts				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	Yes	N/A			
	<i>Responsibility for issuing of travel documents</i>	Yes	N/A			
	<i>Full protection under the 1951 Convention</i>	Yes	N/A			
<i>Statistics</i>		1999	2000	2001	2002	2003
		0	0	0	0	0

Spain⁵²

General introduction

Spain signed the European Agreement on Transfer of Responsibility for Refugees in 1985 and ratified it in 1987.

No bilateral agreements have been concluded. On an informal basis Canada may sometimes ask the Spanish authorities for information or documentation pertaining to refugees who were initially recognised by Spain, but had later filed an application for a visa or already gone to Canada.

There has been only very limited practice within the field of transfer of responsibility for refugees. The authorities presume that very few refugees move from country to country in Europe. Generally, the refugees who are initially recognised and granted asylum in Spain, seem to stay. The few who leave are generally thought to request renewal of their Spanish travel documents at Spanish diplomatic representations abroad rather than seeking a transfer of protection status to the second country.

National legal basis

Practice in cases of transfer of responsibility is governed by the European Agreement and by the Schedule to the 1951 Convention, which both apply directly in Spanish national law as well as by guidelines derived from administrative practice of the Inter-Ministerial Commission on Asylum and Refugees within this field.

Level of transfers

From 1999 to 2003 eight refugees requested transfer of protection status to Spain. Six were granted and two denied. The countries of first protection of the refugees were Sweden, France, Germany, Italy and the UK. Most cases concerned refugees who had obtained a residence permit in Spain on the basis of marriage to a Spanish citizen. One case concerned a refugee who had got a job and thereby a residence permit in Spain. One case concerned a Hungarian refugee whose refugee status was recognised in Germany some 40 years ago. In this case the Spanish authorities found that the ceased circumstances cessation clause should apply and denied the application. There has been no indication of potential links to the Dublin regulation or previous “safe third country” transfers in any of the cases.

Due to the low numbers, official statistics relating to transfer of responsibility are not kept.

⁵² Research visit conducted to Madrid in February 2004

Categories covered

Spain only considers transfer of protection status in relation to refugees recognised under the *1951 Convention*.

In cases of persons who have previously been recognised by another State as being in need of *subsidiary protection*, Spain does not operate transfer of responsibility. Adjudication of protection status in those cases would have to be restarted on request of the person concerned, or – in cases of expulsion – ex officio, if there is indication that return to the country of origin or the first country of protection might imply a risk of *refoulement*.

Criteria

Transfer under the European Agreement on transfer of Responsibility of 1980

In accordance with Article 2 of the European Agreement in conjunction with Paragraph 11 of the Schedule to the 1951 Convention, the criteria for accepting transfer of responsibility for refugees coming from a State of first protection, which is party to the European Agreement are:

- Recognition of Convention refugee status by another State party to the European Agreement *and*
- two years of lawful residence in Spain or earlier if Spain 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. The calculation of the period of stay takes account of the exceptions included in the European Agreement.⁵³

Transfer outside the scope of the European Agreement on transfer of Responsibility of 1980

With certain modifications, the criteria laid down in paragraph 11 of the Schedule to the 1951 Convention apply. Accordingly, responsibility for a refugee shall be transferred from the first state of protection to Spain, if the applicant;

- has Convention refugee status;
- is lawfully residing in Spain, with the exception of time spent in prison or hospital and residence permit obtained for the purpose of studying in Spain or for other short term purposes;
- the first country of protection, which issued the Convention Travel Document does not renew it.

⁵³ See Article 2 (2) of this Agreement

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

Adhering to the Executive Committee Conclusion No. 12 (XXIX), Spain applies extraterritorial effect to refugee status determination carried out by another State Party to the 1951 Convention.

Any request for transfer of responsibility will be examined in light of the cessation and exclusion clauses in accordance with Spanish legal doctrine and case-law. To this end, and in order to ascertain that refugee status was not fraudulently obtained, Spain will normally submit a request to the first country of protection for information about the grounds, which led to the recognition of refugee status.

Level of protection granted

Referring to its obligations under the 1951 Convention, Spain considers itself responsible for granting full protection, i.e. all rights and benefits flowing from the 1951 Convention, to refugees in relation to whom they have accepted transfer of responsibility for issuing travel documents. Refugees for whom Spain has accepted transfer of responsibility are thus treated on a par with refugees initially recognised by Spain. Spain is however uncertain as to whether this obligation is also implied by the European Agreement on Transfer of Responsibility for Refugees.

Transfer outside of the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

Same situation prevails as in cases of transfer under the European Agreement.

Level of protection granted

Same situation prevails as in cases of transfer under the European Agreement.

Procedures applied and effects

An application for transfer of responsibility should be lodged with the Asylum and Refugee Office (OAR) at the Police Headquarters. The OAR prepares a report on the case and forwards it to the Inter-Ministerial Commission on Asylum and Refugees (CIAR). The CIAR examines the request on basis of the evidence submitted by the refugee pertaining to refugee status, that his country of first protection will not renew or prolong his travel document and of lawful residence in Spain. Furthermore, the OAR will normally submit a request to the first State of protection, asking for confirmation of, and information about the grounds leading to recognition of refugee status. With few

exceptions, States of first protection have normally been willing to share the required information with Spain. Together with a recommendation for a decision, the CIAR submits the case to the Ministry of Interior. The Ministry of Interior, which is the central authority competent in matters relating to refugee status determination and asylum, is also responsible for deciding in cases of transfer of responsibility. The Ministry usually follows the recommendation of CIAR.

If transfer of responsibility to Spain is accepted, the Asylum and Refugee Office (OAR) of the Police Headquarters will issue a Convention Travel Document to the refugee involved. Refugee travel documents are valid for five years.

The Convention Travel Document will not contain any reference to the fact that a transfer of responsibility has taken place nor to the name of the first country of protection

Refugees with regard to whom Spain has accepted transfer of responsibility will be issued with the same documentation, as are refugees who have been recognised and granted asylum under ordinary Spanish asylum procedures.

In case of refusal, the decision may, in accordance with the general regulations concerning appeal of decisions relating to asylum and refugee status, be appealed to the Administrative Chamber of the National High Court.

Arrangements with first country of protection

If accepted the first country of protection is informed of the decision and documents issued by the first state of protection are returned.

Role of UNHCR, other international organisations and NGOs

A UNHCR representative in Spain attends the meetings of CIAR in a consultative capacity.

Summary

<i>Ratification of European Agreement of 1980</i>		21 May 1987				
<i>Policy maker</i>		Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		European Agreement on Transfer of Responsibility for Refugees Article 11 of the Schedule to the 1951 Convention Guidelines by CIAR				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		- Convention refugee and - two years of lawful residence in Spain, or earlier if Spain permits the refugee to remain in its territory either on a permanent basis or for a period exceeding the validity of the travel document issued by the first state.	- Convention refugee and Lawful residence in Spain and - the first country of protection will not renew or prolong Travel Documents.			
<i>Procedures</i>		Application: to be lodged with the Asylum and Refugee Office of the Police Headquarters Examination and recommendation: OAR and CIAR First instance decision: the Ministry of Interior Appeal: The Administrative Chamber				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	Yes	Yes			
	<i>Responsibility for issuing travel documents</i>	Yes	Yes			
	<i>Full protection under 1951 Convention</i>	Yes	Yes			
<i>Statistics</i>		1999	2000	2001	2002	2003
		Eight applications. Six granted				

Sweden⁵⁴

General introduction

Sweden ratified the European Agreement on Transfer of Responsibility of Refugee Status in 1980. Sweden has not concluded any bilateral agreements on transfer of responsibility for refugees.

Details of practice on transfer of responsibility are not clear as no particular procedure is foreseen for the handling of those cases, and, instead, they are dealt with on a case-by-case basis by the Swedish Migration Board, which is competent in asylum matters.

There are no statistics available on practice relating to transfer of responsibility for refugees. According to rough estimates by the State officials interviewed for this study, transfer to Sweden take place in between 100 and 200 cases per year.

National legal basis

The European Agreement and the 1951 Convention are both directly applicable. Internal guidelines have been issued (Utlänningshandboken Chapter 15).

Level of transfers

While no statistics are kept on the level of transfer to and from Sweden, it is roughly estimated that Sweden accepts transfer of responsibility for the issuing of travel documents for about 100 – 200 refugees per year. The refugees are thought to mainly come from the United Kingdom, Germany and Denmark. It is assumed that family links is the main reason for refugees to leave their first country of protection and go to reside in Sweden. There is no exact knowledge about the practice of transfers from Sweden to other EU Member States. It seems however that quite a number of Somali refugees have left Sweden for the UK after having been granted residence permit in Sweden.

Categories covered

Sweden only considers transfer of protection status in relation to refugees recognised under the 1951 Convention.

⁵⁴ Research visit conducted to Malmö in January 2004

Criteria

Transfer under the European Agreement on transfer of Responsibility for Refugees of 1980

The criteria for transfer of responsibility to Sweden are:

- Recognition of Convention refugee status
- Permanent residence permit in Sweden.

Permanent residence permit is normally granted to persons with family links in Sweden after two years of temporary residence or earlier if they have got minor children. Obtaining a residence permit for other purposes than joining family in Sweden is in principle possible (for example where the foreigner possesses a specific expertise, which is needed in Sweden), but in reality extremely rare and no examples of refugees who had obtained such a permit was known to the persons interviewed for this study. In those cases, the residence permit would be of only limited duration for the first eight years. In relation to aliens in general it would normally be expected that the person concerned kept his foreign travel document during this period of time, but it is unclear whether the situation would be the same in the particular case of a refugee.

Transfer outside the scope of the European Agreement on transfer of Responsibility

The same criteria for transfer apply regardless of whether the State of first protection is a party to the European Agreement on Transfer of Responsibility.

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility for Refugees of 1980

Recognition of refugee status

Sweden adheres to the Executive Committee Conclusion No. 12 (XXIX) and normally accepts the determination of refugee status carried out by another State in cases of transfer.

Applications for transfer of responsibility will normally not be examined in the light of cessation or exclusion clauses. Only if concrete indications make it apparent that there may be grounds for invoking cessation or that there otherwise might be reasons for revoking refugee status in accordance with the provisions generally applicable to refugees recognised in Sweden will these questions be examined..

Level of protection granted

The guidelines do not touch upon the question of scope of responsibility transferred other than the issuing of travel documents, and it does not seem that the question has come up in practice. An explanation for this could, according to the interviewees, be that the standard of the rights granted to aliens who have residence permit in Sweden on other grounds, for example on basis of family links in Sweden, are normally as high as those granted on basis of residence permits issued specifically on basis of asylum. The interviewees were however of the opinion that full protection would be granted as a matter of course if the refugee submitted an application.

Transfer outside the scope of the European Agreement on transfer of Responsibility

As for under the European Agreement.

Procedures applied and effects

An application for transfer of responsibility has to be submitted to the Swedish Migration Board, which is the central authority competent in asylum matters.

The application will be examined on basis of any evidence the refugee is able to produce documenting his refugee status and permanent residence permit in Sweden.

Convention Travel Documents are issued by the Swedish Migration Board and normally valid for a period of two years at the time. The Convention Travel contains no reference to the fact that transfer of responsibility takes place or to the name of the first country of protection.

If the application is rejected, the decision may be appealed to the National Appeals Board.

Arrangements with first country of protection

The first state of protection will usually be informed of the transfer by the return of the travel document.

Role of UNHCR, other international organisations and NGOs

None

Summary

<i>Ratification of European Agreement of 1980</i>		16 October 1980				
<i>Policy maker</i>		Ministry of Foreign Affairs				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>subsidiary protected persons</i>	No				
<i>National legal basis</i>		European Agreement on Transfer of Responsibility for Refugees Internal guidelines				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		- Refugee status <i>and</i> - Permanent residence, which is normally granted after one or two years of residence	- Refugee status <i>and</i> - Permanent residence, which is normally granted after one or two years of residence			
<i>Procedures</i>		Application lodged with and examined by the Migration Board. Appeal: National Appeals Board				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	Yes	Yes			
	<i>Responsibility for travel documents</i>	Yes	Yes			
	<i>Full protection under the 1951 Convention⁵⁵</i>	Probably on request	Probably on request			
<i>Statistics</i>		1999	2000	2001	2002	2003
		100-200	100-200	100-200	100-200	100-200

⁵⁵ Question has not been dealt with in practice

United Kingdom⁵⁶

General introduction

The United Kingdom ratified the European Agreement on Transfer of Responsibility for Refugees in 1986. Transfer of refugee status to the United Kingdom may both take place under the European Agreement and at the discretion by the Home Secretary outside the Immigration Rules. The Home Office has produced detailed guidelines on transfer of refugee status.

National legal basis

The European Agreement is being applied directly. Guidelines on the application of transfer of refugee status are issued by the Home Office (“Asylum Policy Instructions/October 2002 – Ch.2 S.2. – Transfer of Refugee Status”)

Level of transfers

The UK has limited experience with transfer of protection cases. In the last three years the UK has received some 30 requests for transfer of which around two-thirds were accepted. The refugees mainly held residence permits issued on basis of family or community links or employment in the United Kingdom. Transfer of Refugee Status cases are not currently included in published statistics, and data quality checks would be needed prior to publication. The Home Office has no immediate plans to publish data on Transfer of Refugee Status cases in the near future.

Categories covered

The United Kingdom only considers transfer of protection status for *Convention* refugees.

Criteria

Transfer under the European Agreement on transfer of Responsibility of 1980

Under the European Agreement, an applicant will usually be accepted if the applicant:

- has already gained *lawful* residence in the UK (i.e. the applicant is not applying from abroad or at port); and
- has been recognized as a refugee under the 1951 Convention or the 1967 Protocol by one of the other countries which have ratified the European Agreement; and
- a transfer of responsibility is deemed to have occurred:
- A transfer of responsibility for such an applicant will be deemed to have occurred where one of the conditions set out below is met.

⁵⁶ Research visit conducted to London in January 2004

- The applicant has completed two years continuous stay in the UK with the agreement of the authorities. (Periods spent studying, training, receiving medical treatment, in prison or pending immigration appeal which is ultimately dismissed do not count towards this two-year period. However, visits abroad for less than three consecutive months or six months in total are to be included in the two-year qualifying period.)
- The refugee has been allowed to remain in the UK on a permanent basis - i.e. the applicant has been granted indefinite leave to remain.
- The refugee has been permitted to stay beyond the validity of their travel document from the other state - however, this condition is not met if:
 - the extension beyond validity was granted solely for study or training; or
 - the person is still re-admissible to the first state. The applicant will be re-admissible if the UK requests this within six months of the expiry of the document; or within six months of the person coming to the notice of the authorities, so long as this is within two years of it expiring, for example, in the case of an illegal entrant.

Transfer outside of the European Agreement on transfer of Responsibility of 1980

Applications that do not fall under the provisions of the European Agreement will be considered on a case by case basis and may concern refugees coming from countries of first protection which are parties as well as non-parties to the European Agreement. Responsibility for such cases will only be accepted where the UK is clearly the most appropriate place for their long-term refuge.

Factors to consider when examining such applications include:

- Length of time in the first country of asylum;
- Strength of ties there compared with the UK (e.g. family members or a previous association such as a period of long residence – e.g. similar to time limit in the European Agreement);
- Any compelling compassionate circumstances.

Transfer of responsibility for a refugee will not be accepted merely because the refugee wishes to stay in the UK.

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

The UK adheres to Executive Committee Conclusion No. 12 (XXIX) and applies extraterritorial effect to refugee status determination carried out by another State Party to the 1951 Convention. Accordingly, refugee status is automatically recognised for refugees who are accepted for transfer under the European Agreement.

The UK does not examine requests for transfer in light of cessation and exclusion clauses.

Level of protection granted

Refugees accepted for transfer enjoy full protection in the United Kingdom and are entitled to all rights and benefits flowing from the 1951 Convention on a par with refugees initially recognised by the United Kingdom.

Transfer outside of the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

As for cases within the scope of the European Agreement.

Level of protection granted

As for cases within the scope of the European Agreement.

Procedures applied

The Immigration and Nationality Directorate is responsible for dealing with requests for transfer of protection status and the issuance of travel documents as well as for dealing with ordinary refugee status determination procedures.

When a request for transfer of status is lodged, the case is considered against the criteria noted above. When a decision is made the applicant is informed of the decision.

Whereas applications for transfer of refugee status under the European Agreement cannot be submitted from abroad, applications for transfer on a discretionary basis can be submitted at a British diplomatic post abroad as well as at port or in-country.

Convention Travel Documents issued in the United Kingdom have a validity of 10 years. There is no reference in the Travel Document to the transfer or the name of the country of first protection.

If the application is denied, the decision may be appealed to the Immigration Appeal Tribunal/Immigration Appeals Authority.

Arrangements with first country of protection

The first country of protection is notified if the United Kingdom accepts transfer of responsibility. Travel documents issued by the first country of protection will normally be returned.

Role of UNHCR, other international organisations and NGOs

None.

Summary

<i>Ratification of European Agreement of 1980</i>		1 January 1986				
<i>Policy maker</i>		Asylum and Appeals Policy Directorate Immigration and Nationality Directorate (IND), Home Office				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		European Agreement. Asylum Policy Instructions Immigration Act 1971				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		Two years of lawful residence or earlier if the UK 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 issued by the first state, cf. Article 2 (1) and (2)	Case by case. Factors to be considered: Length of time in the first country, strength of ties, or compelling compassionate circumstances.			
<i>Procedures</i>		Application to be lodged with the Immigration and Nationality Directorate, which examines the case and makes a decision. Appeal: Immigration Appeals Tribunal/Immigration Appeals Authority.				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	Yes	Yes			
	<i>Issuing of travel documents</i>	Yes	Yes			
	<i>Full protection under the 1951 Convention</i>	Yes	Yes			
<i>Statistics – accepted for transfer</i>		1999	2000	2001	2002	2003

Switzerland⁵⁷

General introduction

Switzerland ratified the European Agreement on Transfer of Responsibility for Refugees in 1986.

Furthermore Switzerland has concluded bilateral agreements, which include provisions relevant to transfer of responsibility, with:

- France in 1960 on the Movement of Refugees,
- France in 1960 on the Right of Return of Refugee Workers
- the Benelux in 1964 on the Movement of Refugees
- the Benelux in 1964 on the Right of Return of Refugee Workers

Switzerland has only dealt with few cases of transfer of responsibility.

National legal basis

Article 50 of the Swiss Asylum Law and case-law of the Federal Office for Refugees.

Level of transfers

In the course of the last 5 years, Switzerland has accepted transfer of responsibility for refugees in 52 cases. The countries of first protection have mainly been neighbouring countries like Germany and France. In 2003, the countries of origin of the persons concerned were Turkey, Sri Lanka and Laos. Most - if not all - requests for transfer of responsibility concern refugees who have obtained residence permit in Switzerland on basis of marriage with a person living in Switzerland.

Categories covered

Switzerland only considers transfer of protection status in relation to refugees recognised under the 1951 Convention.

Criteria

Transfer under the European Agreement on transfer of Responsibility of 1980

The criteria for transfer of responsibility for refugees coming from a State party to the European Agreement as developed in case law by the Federal Office for Refugees is

- Recognition as a refugee under the 1951 Convention by another State party or by UNHCR
- Residence permit in Switzerland.

⁵⁷ Research visit conducted to Switzerland in November 2003.

The length of stay in Switzerland is not considered relevant nor is it a requirement that the travel document issued by the first state has expired.

Transfer outside of the European Agreement on transfer of Responsibility of 1980

The legal basis for transfer of responsibility for refugees coming from first States of protection that are not parties to the European Agreement has been developed by case-law of the Federal Office for Refugees on basis of Article 50 of the Asylum Act. The criteria for transfer of responsibility in those cases are:

- Recognition as a refugee under the 1951 Convention by another State – or UNHCR - party to this convention, and
- Residence permit in Switzerland for the last two years, *or* earlier if the travel document issued by the first country of protection has expired.

Switzerland does normally not examine requests for transfer in light of cessation and exclusion clauses. In practice cessation or exclusion has not been applied subsequently either.

Scope of transfer

Transfer under the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

Switzerland adheres to ExCom Conclusion No. 12 (XXIX) and applies extraterritorial effect to refugee status determination carried out by another State Party to the 1951 Convention.

Switzerland does not normally examine requests for transfer in light of cessation and exclusion clauses. Theoretically, cessation clauses generally applicable to refugees would also apply in cases of transfer.

Level of protection granted

When Switzerland accepts transfer of responsibility for refugees this implies taking full responsibility for the protection of the refugee under the 1951 Convention granting him or her all the rights and benefits that flow from this instrument on a par with refugees who have initially been recognised by Switzerland. Thus, Switzerland does not consider that the first country of protection retains any responsibility towards the refugee once transfer has taken place.

Transfer outside of the European Agreement on transfer of Responsibility of 1980

Recognition of refugee status

As for under the European Agreement.

Level of protection granted

As for under the European Agreement.

Procedures applied and effects

The Federal Office for Refugees is responsible for dealing with requests for transfer of protection status and the issuance of travel documents as well as for dealing with ordinary refugee status determination procedures.

An application for transfer must be lodged with the Federal Office for Refugees, which could send a request to the Canton where the applicant holds his residence permit, asking for confirmation and further information about the length of stay of the applicant, in unclear cases.

Upon acceptance, the residence permit already issued remains valid and a Convention Travel Document will be issued to the refugee. The Travel Document contains no reference to the transfer of responsibility, which has taken place or to the former country of protection. In addition the refugee will be informed of the access to welfare and integration measures specifically for refugees.

A request for transfer of protection status may be lodged at a Swiss Consular Office abroad as well as from within the country. If the refugee applies from abroad the Federal Office for Refugees will submit the application to the Canton authorities which will consider whether the applicant fulfils the criteria for being granted residence permit. This will normally be so in case of for example marriage to a person already living in Switzerland and denial would be considered a violation of Article 8 of the ECHR. Subsequently, based on the decision of the Canton authorities, the Federal Office for Asylum will in accordance with the general criteria decide whether to grant the request for transfer of refugee status or not.

If the Federal Office rejects the application for transfer, an appeal against the decision may be lodged with the Asylum Appeals Commission. A negative decision by the Canton authorities may be appealed within the Canton but not to the federal authorities.

Arrangements with first country of protection

The first country of protection will normally not be notified of the decision of the Swiss authorities to accept transfer of responsibility. Documents issued by the first country of protection will only be returned on receipt of an explicit request.

Role of UNHCR, other international organisations and NGOs

None

Summary

<i>Ratification of European Agreement of 1980</i>		13 January 1986				
<i>Policy maker</i>						
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		Article 50 of the Asylum Law				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		- Convention refugee - Residence permit in Switzerland.	- Convention refugee - residence permit in Switzerland for at least two years, or the travel document issued by the first country of protection has expired			
<i>Procedures</i>						
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	Yes	Yes			
	<i>Responsibility for issuing travel documents</i>	Yes	Yes			
	<i>Full protection under the 1951 Convention</i>	Yes	Yes			
<i>Statistics</i>		1999	2000	2001	2002	2003
		13	15	7	7	10

1.2. States not using the European Agreement on transfer of responsibility for refugees

Austria⁵⁸

General introduction

Austria is not a party to the European Agreement on transfer of Responsibility for Refugees. Bilateral Agreements on the Stay of Refugees within the Meaning of the 1951 Convention Relating to the Status of Refugees, were concluded with the Benelux in 1964 and France in 1974, and these as well as relevant provisions of the 1951 Convention apply to cases of transfer.

Case law seems to be limited the result of which is that it is not possible to give a clear picture of the Austrian current policy and practice within this field. Generally, practice on transfer seems to be confined mainly to transfer of responsibility for issuing travel documents to refugees who come within the scope of the two bilateral agreements concluded with the Benelux countries and France respectively.

National legal basis

Practice in cases of transfer of responsibility is governed by the 1951 Convention and its Schedule and by the above bilateral agreements entered by Austria (which all are being applied directly by the Austrian authorities) in conjunction with Part 7 of the Federal Law concerning the Entry, Residence and Settlement of Aliens (1997 Aliens Act). The Federal Office for Asylum issues guidelines.

Level of transfers

No official statistics are available. According to the persons interviewed for this study, it is not possible to give concrete estimates of the number of transfers taking place except that it seems to be very limited.

Categories covered

Only Convention refugees are accepted for transfer.

Criteria

Under the Bilateral Agreement of 12 June 1964 concluded between Austria and the Benelux on the Stay of Refugees within the Meaning of the 1951 Convention Relating to the Status of Refugees:

⁵⁸ Research visit conducted in December 2003

Under this agreement, Austria must provide the holder of a Convention travel document issued by the Benelux authorities with a new travel document pursuant to Section 11 of the Annex to that Convention if the refugee in question has lawfully resided within the territory of Austria:

- beyond the period of validity of the travel document, *or*
- for a continued period of at least two years.

The period of residence of two years is not considered as interrupted by temporary absences totalling up to six months. Periods spent in detention on the decision of a tribunal or in hospital for medical treatment are not taken into account in calculating the period of two years.

Requests for transfer will moreover be examined against Article 83 of the Austrian Aliens Act. The relevant provisions of this regulation stipulates that

- ... (2) Convention travel documents may further be issued, upon application, to refugees who have been granted asylum in another State, if they do not possess a valid travel document and their entry has taken place without evasion of the border control.
- (3) The authority shall, in exercising the discretionary power granted to it under paragraph (2) above, give due consideration not only to the personal circumstances of the applicant but also to security policing aspects, as well as to any possible harming of the relations between the Republic of Austria and another State.

Transfer under the Bilateral Agreement of 21 October 1974 concluded between Austria and France on the Stay of Refugees within the Meaning of the 1951 Convention Relating to the Status of Refugees.

Under this agreement, Austria must provide the holder of a Convention travel document issued by France with a new travel document pursuant to Section 11 of the Annex to that Convention if the refugee in question has:

- obtained permission to reside for an unlimited period within Austrian territory, or
- has lawfully resided there for a continuous period of at least two years.

The period of residence is not considered as interrupted by temporary absences totalling up to three months. Periods spent in hospitals, clinics or convalescent homes or similar institutions, periods spent in detention, in a penitentiary or for the purpose of studies are not taken into account in calculating the period of residence.

With regard to examination against the provisions of Article 83 (2) and (3) of the Austrian Aliens Act, the same situation prevails as in cases of transfer under the bilateral agreement concluded by Austria with the Benelux.

Transfer outside the scope of the Bilateral Agreements concluded by Austria with other EU Member States

Article 28 and the Schedule of the 1951 Convention in conjunction with Article 83 (2) and (3) govern transfer from countries with which Austria has not concluded relevant bilateral agreements. Accordingly responsibility for issuing travel documents shall be transferred from the first State of protection to Austria, in cases of:

- Recognition of Convention refugee status by another State party to the 1951 Convention,
- the refugee does not possess a valid travel document,
- Austria was entered without evading border controls *and*
- the competent authority is satisfied that the issuance of travel documents is justified under Article 83 (2) of the Aliens Act. In exercising the discretionary power granted to it, the competent authority must, in accordance with Article 83 (3) give due consideration not only to the personal circumstances of the applicant but also to aspects of security policy and possible damage to Austria's relations with another country.

Scope of transfer

Recognition of refugee status

Austria does not apply extraterritorial effect to refugee status determination carried out by another State party to the 1951 Convention. Consequently, requests for transfer will not be examined in light of exclusion and cessation clauses.

Level of protection granted

Beyond the issuing of travel documents, Austria considers the first State to continue to be responsible for the protection of the refugee even after the transfer has taken place.

Procedures applied and effects

The responsible authority for issuing travel documents in case of transfer of responsibility is the District Administrative Authority or, in the local area of a federal police authority, that police authority. Those authorities act in accordance with guidelines issued by the BMI, Federal Asylum Office.

Convention Travel Documents are valid for up to five years at the time.

In case of refusal, the decision may be appealed to the Security Headquarters (Sicherheitsdirektion).

Arrangements with first country of protection

There is no available information on this point.

Role of UNHCR, other international organisations and NGOs

None

Summary

<i>Ratification of European Agreement of 1980</i>		No				
<i>Bilateral agreements</i>		With Benelux and France				
<i>Policy maker</i>		Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Subsidiary protected persons</i>	No				
<i>National legal basis</i>		1951 Convention and Schedule, bilateral agreements, 1997 Aliens Act as amended				
<i>Main criteria</i>	<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>				
	N/A	<p><u>Benelux - first States of protection:</u> - Convention refugee - two years of residence <i>or</i> travel document invalid - satisfy Aliens Act Article 83 (2) and (3)</p> <p><u>France - first State of protection:</u> - Convention refugee - residence permit for indefinite stay <i>or</i> two years of continuous residence - satisfy Aliens Act Article 83 (2) and (3)</p> <p><u>Other states - first state of protection:</u> - Convention refugee - lawful residence - travel document invalid - lawful entry - satisfy Aliens Act Article 83 (2) and (3)</p>				
<i>Procedures</i>		1 instance: District Administrative Authority/local police 2 instance: Security Headquarters				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	N/A	No			
	<i>Responsibility for issuing travel documents</i>	N/A	Yes			
	<i>Full protection under 1951 Convention</i>	N/A	No			
<i>Statistics (not available)</i>		1999	2000	2001	2002	2003
		?	?	?	?	?

Belgium⁵⁹

General introduction

Under Belgian law, transfer of protection status is covered by the concept of “confirmation of refugee status”.

Belgium signed the *European Agreement on transfer of responsibility for refugees* on 16 October 1980. However Belgium has never actually ratified the Agreement even though, according to the persons interviewed for this study, there seem to be no obvious politically motivated obstacles to this.

Current Belgian policy and practice in the field of transfer of responsibility for refugees are close, though not identical, to the principles and criteria laid down in the European Agreement. The concept of confirmation of refugee status implies Belgium taking full responsibility for the protection of the refugee who transfers from another state.

Belgium has signed three *bilateral agreements* related to the question of transfer of responsibility, namely the Benelux-Switzerland Agreement of 14 May 1964 on movement of refugees, the Benelux-Switzerland Agreement of 14 May 1964 on the right of return of refugee workers; and Benelux-Austria of 12 June 1964 on the stay or refugees within the meaning of the 1951 Convention. There is no exact information on the practical importance of these agreements.

National legal basis

The legal basis for “confirmation of refugee status” is in Articles 49 and 57 (6) 3 of the Law of 15 December 1980 on Admission to the Territory, Stay, Settlement and Removal of Foreigners, and in Article 93 of the Royal Decree of 8 October 1981 on Admission to the Territory, Stay, Settlement and Removal of Foreigners.

Level of transfers

Over the last five years Belgium has accepted transfer of responsibility for between four and fifteen refugees a year. Countries of first protection have been Germany, France, Italy and a number of African countries. In 2003 the countries of origin of the refugees who transferred to Belgium were Rwanda (4), Yugoslavia (3), Turkey (2), Vietnam (2), Burundi (1), Ethiopia (1) and Iraq (1). They had all obtained a residence permit in Belgium for the purpose of family reunification.

From 1992 to 2002 around 60 persons have transferred from Belgium to other countries. Since the beginning of 2003, Belgium has only been informed of one refugee who transferred from Belgium to another country, which is maybe likely to be in consequence of the fact that, since 1 May 2000, refugees may acquire Belgian citizenship after only

⁵⁹ Research visit conducted in February 2004

two years of uninterrupted residence in Belgium. Countries of destination are, in order of magnitude of refugees transferred: the United Kingdom, France, Germany, Canada, the Netherlands, Sweden, the United States and Luxembourg. The refugees have originated from around 13 different countries, the main nationalities being Iranian and Vietnamese.

Statistics are kept over refugees accepted for transfer to Belgium, but not on the number of demands. Interviewees estimate that around 25 applications for transfer to Belgium are lodged every year.

Categories covered

Only *Convention* refugees are eligible for transfer to Belgium. This is related to the fact that Belgium does not have a protection scheme for persons in need of *subsidiary protection* within its national refugee and asylum regime.

Criteria

According to Article 93 of the Royal Decree, the Commissioner-General for Refugees and Stateless Persons may confirm, i.e. accept transfer of the refugees status of an alien who:

- Is recognised as a refugee under the 1951 Convention by another State party to this convention;
- Has been lawfully resident in Belgium for at least 18 months of uninterrupted stay;
- The residence has not been of limited duration for a specific reason, for example studies.

Residence permits granted on basis of family reunification will normally be issued for the purpose of indefinite stay, although only for one year at the time the first three years.

Scope of transfer

Recognition of refugee status

Adhering to ExCom Conclusion No. 12 (XXIX), Belgium applies extra-territorial effect to refugee status recognised by another state party to the 1951 Convention.⁶⁰ The refugee status is acknowledged on residence and work permits and other relevant documents upon transfer of responsibility (“confirmation” of refugee status).

Accordingly, when applying the concept of confirmation of refugee status, there is a strong presumption that the reasons leading to initial recognition are still valid when transfer is taking place. The provisions of the 1951 Convention on cessation of refugee status which are applicable to refugee status initially recognised by the Belgium

⁶⁰ Whereas *rejections* by the Aliens Office will normally not acknowledge the refugee status of the applicant, rejections by the Office of the Commissioner-General for Refugees and Stateless Persons (CGRA) do acknowledge the refugee status, but add that the criteria for being granted asylum in Belgium are not met and the first country of protection still considered responsible

authorities also apply to those whose status has been confirmed in Belgium. Cessation is very rarely applied in Belgium.

Level of protection granted

When Belgium accepts transfer of responsibility for refugees this implies taking full responsibility for the protection of the refugee under the 1951 Convention granting him or her all the rights and benefits that flow from this instrument. He or she will have the same rights and obligations under the 1951 Convention and Belgian law as a refugee who is recognised under the ordinary Belgian asylum procedure.

As Belgium has not ratified the European Agreement, no distinction is made between transfer of responsibility concerning refugees coming from a country of first protection, which is party to the Agreement and transfers from non-Parties.

Procedures applied and effects

The responsibility of the Office of the Commissioner-General for Refugees and Stateless Persons (Commission Général aux Réfugiés et aux Apatrides” - CGRA) which is the authority generally responsible for refugee protection and administrative assistance in Belgium, includes the competence to decide on requests for transfer (confirmation) of refugee status.

An application for confirmation must be submitted to the Office of the CGRA together with a 1951 Convention Travel Document and proof of lawful stay (i.e. a residence permit) in Belgium. Applicants have to fill in a questionnaire, which, inter alia, includes questions on the family set-up. The first state of protection is not consulted or notified at this stage. An application can only be submitted within the Belgian territory.

If the conditions of Article 93 of the Royal Decree are not met, the application will be declared inadmissible and no formal decision will be made by the CGRA. If the conditions of Article 93 are met, but cessation or exclusion clauses apply, the Commissioner-General will take a decision not to confirm the refugee status. If appropriate Belgium might inform the competent authorities of the first state that a cessation or exclusion clause might be applicable.

A formal decision not to confirm refugee status by the Office of the CGRA may be appealed to the Permanent Commission for Refugee Appeals (“Commission Permanente de Recours des Réfugiés”). An appeal has suspensive effect on an order to leave the territory.

If refugee status is confirmed the refugee will have the same rights as refugees recognised under the ordinary Belgian refugee status determination procedure, and may, inter alia, apply to the Foreign Ministry for travel documents under paragraph 11 of the Schedule to the 1951 Convention and is entitled to administrative assistance in accordance with Article 25 of the Convention.

1951 Convention Travel Documents are issued by the Ministry of Foreign Affairs and valid for one year at the time. Travel documents issued pursuant to transfer of responsibility will carry no mentioning of this transfer or of the country of first protection.

Arrangements with first country of protection

The first country of protection will be notified of the transfer of responsibility and documents initially issued by that country returned through the Ministry of Foreign Affairs.

Role of UNHCR, other international organisations and NGOs

UNHCR may play an informal advisory role.

Summary

<i>Ratification of European Agreement of 1980</i>		Signed in 1980. Not ratified				
<i>Bilateral agreements</i>		<u>Benelux-Switzerland</u> of 14 May 1964 on movement of refugees ; <u>Benelux-Switzerland</u> of 14 May 1964 on the right of return of refugee workers; <u>Benelux-Austria</u> of 12 June 1964 on the stay or refugees within the meaning of the 1951 1951 Convention				
<i>Policy maker</i>		Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Subsidiary protected persons</i>	No				
<i>National legal basis</i>		Articles 49 and 57/6 of the Law of 15 December 1980 on Admission to the Territory, Stay, Settlement and Removal of Foreigners. Article 93 of the Royal Decree of 8 October 1981 on Admission to the Territory, Stay, Settlement and Removal of Foreigners				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		N/A	<ul style="list-style-type: none"> - Recognition of refugee status by another State, - 18 month of lawful and uninterrupted residence in B, which has not been limited for specific reason 			
<i>Procedures</i>		Application lodged with and examined by the Office of the Commissioner-General for Refugees and Stateless Persons (CGRA). Appeal instance: Permanent Commission for Refugee Appeals Bilateral proceedings: Country of first protection is notified upon confirmation/acceptance of transfer of responsibility. Documents issued by that country are returned.				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	N/A	Yes			
	<i>Issuing of travel documents</i>	N/A	Yes			
	<i>Extension of full protection</i>	N/A	Yes			
<i>Statistics – number of transfers to Belgium</i>		1999	2000	2001	2002	2003
		8	15	11	4	14

France⁶¹

General introduction

France has never signed or ratified the European Agreement on transfer of Responsibility for Refugees even though, according to the persons interviewed for this study, there seem to be no real objections to this. In 1960, France concluded two bilateral agreements with Switzerland, which include provisions relevant to transfer of responsibility, one on the Movement of Refugees and one on the Right of Return of Refugee Workers.

National Legal Basis

Principles and practice in the field of transfer of responsibility for refugees have developed on basis of case-law by the Commission on Appeal for Refugees and through administrative practice of the French Office for the Protection of Refugees and Stateless Persons (“Office Français de protection des réfugiés et apatrides” – OFPRA), which are the authorities normally competent in matters relating to the recognition of refugee status and granting asylum.

Categories covered

Only Convention refugees are accepted for transfer.

Level of transfers

France does not keep official statistics within this area. It is estimated that around 25 refugees are accepted for transfer each year. The numbers in 2001 were 31 and in 2002, 40 refugees. The first countries of protection are mainly African countries (more than 70%), but transfers are increasing from EU Member States.

Criteria

The application for transfer of protection is examined once the foreigner recognised as a refugee on the basis of the 1951 Convention has been:

- granted *residence in France* in accordance with the ordinary rules applicable to aliens in general as regards entry and residence on French territory and
- *expressed his intention to settle down in France for a long period.*

Thus, he should have, either, entered France under cover of a long-term visa permitting long-term residence, or been granted a one year “temporary residence permit” or a “resident’s card” valid for 10 years. The conditions for the issuance of the said permits relate, for instance, to marriage with a French or EU citizen, parenthood of a child

⁶¹ Research visit conducted in February 2004

having French nationality, or grounds linked with private and family life. In no case can residence be granted where the person concerned poses a threat to public order.

Accordingly, transfer will be granted if the person concerned poses no threat to public order in the following cases:

- Long-term residence has been granted. In those cases, OFPRA will just take note of this and inscribe the refugee in its records
- The refugee's residence permit is temporary and OFPRA determine long term nature of the residence in light of the particular circumstances of the case

Scope of transfer

Recognition of refugee status

Explicitly adhering to ExCom Conclusion No. 12 (XXIX) and in accordance with established national case-law, France applies extraterritorial effect to refugee status recognised in another State unless it appears that the person manifestly does not fulfil the requirements of the 1951 Convention. Thus, according to guiding decisions of the Refugee Appeal Commission, a refugee who is "authorised to reside in France" is accorded the treatment attached to such status when that status was obtained abroad.

Examination of a request for transfer will therefore normally not result in calling the initial decision to recognise refugee status into question. Refugees who transfer to France will be treated on a par with refugees who are recognised initially by the French authorities, and thus – if the situation arises – be subject to the cessation clauses of Art. 1C of the 1951 Convention. Furthermore, refugee status may be withdrawn if it appears that the alien has obtained the status by means of deception.

Level of protection granted

When France accepts transfer of responsibility for refugees this implies taking full responsibility (i.e. beyond the issuing of travel documents) under the 1951 Convention for their protection granting them all the rights and benefits flowing from this instrument. Refugees who have transferred will thus be treated on a par with refugees whose status were recognised by France in the first place.

Procedures applied and effects

The competence to decide on requests for transfer of responsibility for refugees lies with the French office for the protection of refugees and stateless persons (OFPRA) which is responsible in all matters relating to the recognition of refugee status. The responsibility for the granting of residence permits, which is a precondition for transfer, lies with the Ministry of the Interior and is implemented locally by the Prefectures in accordance with the rules applicable to aliens in general.

When the refugee is accorded residence, whatever the type of residence permit granted, he may in principle apply to OFPRA for a transfer. The application form is issued by the local prefecture. It can however be denied where the refugee recognised by another State is not granted residence in France. OFPRA will examine the request on basis of the refugee's travel document or other documentation establishing his status and the nature of his residence in France. If he is not in possession of a resident card, OFPRA will, in particular when the temporary residence permit is issued for "private and family" reasons, contact the local prefecture in order to elicit the long term nature of the residence. Moreover, OFPRA will often contact UNHCR for confirmation of the documentation relating to recognition of refugee status in the first country of protection.

If transfer is granted, the beneficiary will - as a refugee - be issued a resident's card, which mentions his nationality and status as a refugee. OFPRA also issues documents replacing those a refugee is unable to obtain from his own country, for instance birth certificates.

If the request for transfer is denied by OFPRA, the refugee may appeal to the Refugee Appeals Commission (CRR). If transfer is denied, the renewal of the person's leave to remain will be made in accordance with the rules applicable to aliens in general.

The competence to issue Convention Travel Documents lies with the Prefecture. A Convention Travel Document issued pursuant to transfer of responsibility to France is identical to travel documents issued to refugees recognised by the French authorities in the first place. No reference is made to the fact that the recognition of refugee status was done by another state.

Arrangements with first country of protection

If France accepts transfer of responsibility for a refugee the first state of protection will in principle be informed accordingly and travel documents issued by that state returned.

Role of UNHCR, other international organisations and NGOs

In the course of procedures, OFPRA will often contact UNHCR for confirmation of the documentation relating to recognition of refugee status in the first country of protection.

Summary

<i>Ratification of European Agreement of 1980</i>		No				
<i>Bilateral agreements</i>		No				
<i>Policy maker</i>		Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Subsidiary protected persons</i>	No				
<i>National legal basis</i>		Case-law				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		N/A	<ul style="list-style-type: none"> - Residence in France - long term nature of stay (which in practice may be established after between 0 and 10 years of previous residence depending on the grounds for obtaining residence) 			
<i>Procedures</i>		1 instance: OFPRA 2 instance: CRR				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	N/A	Yes			
	<i>Responsibility for issuing travel documents</i>	N/A	Yes			
	<i>Full protection under 1951 Convention</i>	N/A	Yes			
<i>Statistics (not available)</i>		1999	2000	2001	2002	2003
		+/- 25	+/- 25	31	40	+/- 25

Greece⁶²

According to the Ministry of Public Order, which is responsible for the examination of asylum claims, the authorities have no relevant experience within the field of transfer of responsibility for refugees. No applications have been lodged so far.

Greece signed the European Agreement on Transfer of Responsibility for Refugees, but has not yet ratified the agreement. The legal framework in Greece does not provide any regulation within this field. An application for transfer would therefore be examined under the normal asylum procedure. An application for asylum has to be lodged with the Ministry of Public Order, which will examine the case and make a decision.

According to jurisprudence of the Greek Asylum Committee, which is a second-degree administrative body under the auspices of the Ministry of Public Order and responsible for the review of rejected asylum applications, extraterritorial effect has to be given to determinations of refugee status made by another State party to the 1951 Convention and the principle of non-refoulement has to be respected in cases of rejected asylum seekers. Accordingly, and with explicit reference to the principle of non-refoulement, residence permit as (legalised) migrants - but not as refugees - has been granted in a small number of cases of refugees who were rejected asylum in Greece, but where expulsion to the first country of asylum turned out to be impossible.

Summary

<i>Ratification of European Agreement of 1980</i>		Signed in 1980, not ratified				
<i>Policy maker</i>		Ministry of Public Order				
<i>Categories covered</i>	<i>Convention refugees</i>	No				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		None				
<i>Main criteria</i>		None				
<i>Procedures</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		N/A	None			
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	N/A	(Yes)			
	<i>Issuing of travel documents</i>	N/A	(No)			
	<i>Extension of full protection</i>	N/A	(No)			
<i>Statistics</i>		1999	2000	2001	2002	2003
		0	0	0	0	0

⁶² Questionnaire completed in March 2004

Ireland⁶³

Ireland is not a party to the European Agreement on Transfer of Responsibility Refugees of 1980 and has not concluded any bilateral agreements on this subject either.

According to the Department of Justice, Equality and Law Reform, which is responsible for the examination of asylum and transfer claims, the authorities have no relevant experience in this matter or knowledge of any transfer of protection cases arisen in the jurisdiction to date.

Convention status is the only refugee status granted in Ireland so this would also apply when determining a transfer case, should one arise.

There is no specific legislation or guidelines concerning the examination of an application for transfer of responsibility. The responsible operational officers would therefore assess applications for transfer on a case-by-case basis. An application for transfer has to be lodged with the Immigration Division of the Department of Justice, Equality and Law Reform.

Summary

<i>Ratification of European Agreement of 1980</i>		No				
<i>Policy maker</i>		Department of Justice, Equality and Law Reform				
<i>Categories covered</i>	<i>Convention refugees</i>	?				
	<i>Persons in need of subsidiary protection</i>	?				
<i>National legal basis</i>		None				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		N/A	?			
<i>Procedures</i>		Application lodged with and examined by the Department of Justice, Equality and Law Reform, Immigration Division				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	N/A	?			
	<i>Issuing of travel documents</i>	N/A	?			
	<i>Extension of full protection</i>	N/A	?			
<i>Statistics</i>		1999	2000	2001	2002	2003
		0	0	0	0	0

⁶³ Questionnaire completed in February 2004

Luxembourg⁶⁴

General introduction

Luxembourg has signed, but never ratified the European Agreement on transfer of Responsibility for Refugees.

Luxembourg has signed three *bilateral agreements* related to the question of transfer of responsibility, namely the Benelux-Switzerland Agreement of 14 May 1964 on movement of refugees, the Benelux-Switzerland Agreement of 14 May 1964 on the right of return of refugee workers; and the Benelux-Austria Agreement of 12 June 1964 on the stay of refugees within the meaning of the 1951 Convention. There is no exact information on the practical importance of these agreements.

Policy and practice in the field of transfer of responsibility for refugees has developed on basis of the relevant provisions in 1951 Convention. Less than 20 transfers take place to Luxembourg a year.

National legal basis

The provisions relating to transfer or responsibility of the 1951 Convention and its Schedule are directly applicable.

Level of transfers

Luxembourg does not keep official statistics within this area. According to the interviewee for this study, it is estimated that the number of accepted transfers to Luxembourg does not exceed 20 a year and that the number of actual applications is not much higher.

Categories covered

Only Convention refugees are accepted for transfer.

Criteria

Transfer of responsibility to Luxembourg for Convention refugees will take place

- Immediately upon grant of residence permit in Luxembourg with the exception of cases where residence is granted for the purpose of stays limited for a specific purpose such as studies in Luxembourg

⁶⁴ Questionnaire completed in February 2004

Scope of transfer

Recognition of refugee status

In principle, the examination of the application for transfer will contain a short analysis of the grounds for refugee status. In practice, however, this examination will, according to the person interviewed for this study, only consist in putting a few questions to the applicant about the reasons for the grant of asylum in the first country of protection. Thus in reality, the presentation of the Convention Travel Document issued by the first country of protection will normally be taken as rather conclusive and sufficient documentation for the refugee status of the person concerned. Only where particular circumstances or apparent ambiguities indicate that the refugee status has been cancelled or cessation and exclusion clauses may in fact apply, application will be examined more thoroughly.

Level of protection granted

Luxembourg considers itself responsible for granting full protection under the 1951 Convention to refugees who have transferred and they will be entitled to all rights and benefits flowing from the 1951 Convention on a par with refugees recognised under regular asylum procedures in Luxembourg.

Procedures applied and effects

The competence to decide on requests for transfer of responsibility for refugees lies with the Ministry of Justice (the central authority responsible for asylum matters). An application for transfer has to be lodged with the Refugee Reception Office of the Ministry of Justice, which accords a short interview with the applicant. If doubt arises, the first country of protection will be asked to confirm that the refugee status granted is still valid. This and the Convention travel document issued by the first state will form basis for the decision to be made by the Ministry of Justice.

Following the acceptance of transfer of responsibility for the refugee, the Ministry of Foreign Affairs will issue a Convention Travel Document. The Travel Document will contain no reference to the fact that transfer of responsibility has been transferred nor to the name of the first country of protection.

Negative decisions by the Ministry of Justice can be appealed to the Administrative Tribunal and further to the Administrative Court. Both appeals have suspensive effect.

Arrangements with first country of protection

If, during the examination of the request for transfer, doubts arise as to the actual status of the person concerned, the Ministry of Justice may request the country, which has issued the Convention Travel Document, to verify that refugee status has not been withdrawn.

Upon acceptance of transfer, the Ministry of Foreign Affairs informs the first State of protection accordingly and returns the travel document.

Role of UNHCR, other international organisations and NGOs

None

Summary

<i>Ratification of European Agreement of 1980</i>		No (signed on 14 May 1981)				
<i>Bilateral agreements</i>		No				
<i>Policy maker</i>		Ministry of Justice				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Subsidiary protected persons</i>	No				
<i>National legal basis</i>		1951 Convention and Schedule				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		N/A	- Residence permit <i>or</i> - Lack of protection in first State			
<i>Procedures</i>		1 instance: Ministry of Justice 2 instance: Appeal to Administrative Tribunal and further to Administrative Court				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Extraterritorial recognition of refugee status</i>	N/A	No/yes ⁶⁵			
	<i>Responsibility for issuing travel documents</i>	N/A	Yes			
	<i>Full protection under 1951 Convention</i>	N/A	Yes			
<i>Statistics (not available)</i>		1999	2000	2001	2002	2003
		< 20	< 20	< 20	< 20	< 20

⁶⁵ Theoretically extraterritorial effect is not being applied, however in reality, it normally is.

Slovak Republic⁶⁶

General introduction

The Slovak Republic is not party to European Agreement on Transfer of Responsibility. This instrument is not part of the EU Acquis and ratification is therefore not seen as a priority.

The Slovak Republic does not operate with the notion of transfer of responsibility for protection in national legislation or practice. According to officials interviewed for this study, responsibility would nevertheless normally be accepted under adapted regular asylum procedures where a refugee has settled permanently in the Slovak republic and the first country of protection rejects reissuing or prolonging Convention Travel Documents.

National legal basis

No specific legislation or guidelines have been adopted in the field of transfer of protection and adapted regular asylum procedures would be applied in those cases.

Level of transfers

There have been no cases of “transfer” in the last five years. Thus, the Border and Aliens Police, which is the competent authority in matters relating to the issuance of residence permits to aliens as well as of travel documents, has not issued residence permit to refugees to whom asylum had previously been granted in another country, nor has any requests for the taking over of the responsibility for issuance of Convention Travel Documents been submitted by any refugee within this period of time.

Categories covered

Only Convention refugees would be eligible for transfer of protection status

Criteria

Transfer of responsibility to the Slovak Republic is accepted under the following conditions:

- The refugee has previously been recognised as a refugee and granted asylum by another Member State of the EU
- The refugee has settled permanently on the territory of the Slovak Republic;
- Prolongation or renewal of the Travel Document is rejected by that first country of protection;

⁶⁶ Research visit conducted in December 2003

- The refugee applies for asylum in the Slovak Republic and cessation clauses do not apply.

Scope of transfer

Recognition of refugee status

The Slovak Republic would accept the refugee status determination carried out by another Member State of the EU. In cases of transfer, the refugee would have to apply for asylum in the Slovak Republic. The examination of his asylum application will however be limited to the examination of whether cessation clauses would apply in the particular case.

Level of protection granted

The refugees in relation to whom responsibility has been transferred to the Slovak Republic will enjoy the same rights and benefits as other refugees granted asylum in the Slovak Republic.

Procedures applied and effects

If an application for travel documents is lodged by a refugee who was initially recognised by and granted asylum in another State, the Slovak authorities will contact the State, which issued the travel document, and request it to renew or prolong the travel document.

If the first State rejects renewing or prolonging the travel document, the refugee will be advised to apply for asylum under the regular asylum procedure in the Slovak Republic. The Migration office (the central authority competent in asylum matters) will however only examine the application in the light of cessation clauses.

If asylum is granted by the Migration Office, the Aliens and Border Police will issue a residence permit for refugees and a Convention travel document to the refugee.

A negative decision on asylum may be appealed to the courts in accordance with the regular asylum procedure.

Arrangements with first country of protection

The first country of protection will be contacted prior to and during examination of the application for asylum in the Slovak Republic.

Role of UNHCR, other international organisations and NGOs

None

Summary

<i>Ratification of European Agreement of 1980</i>		No				
<i>Bilateral Agreements</i>		None				
<i>Policy maker</i>		Ministry of Interior				
<i>Categories covered</i>	<i>Convention refugees</i>	Yes				
	<i>Persons in need of subsidiary protection</i>	No				
<i>National legal basis</i>		2002 Asylum Act as amended				
<i>Main criteria</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
		N/A	<ul style="list-style-type: none"> - Permanent settlement in the Slovak Republic; - Denial of renewal or prolongation of travel documents by first country of protection; - Cessation clauses do not apply 			
<i>Procedures</i>		1 Instance asylum decision: Migration Office 2 Instance: Courts Issue of travel documents: Aliens and Border Police				
<i>Scope of transfer</i>		<i>Under European Agreement</i>	<i>Outside scope of European Agreement</i>			
	<i>Recognition of refugee status</i>	N/A	Yes			
	<i>Responsibility for issuing travel documents</i>	N/A	Yes			
	<i>Full protection under the 1951 Convention</i>	N/A	Yes			
<i>Statistics</i>		1999	2000	2001	2002	2003
		?	?	?	?	?

2. Qualitative and quantitative assessment of transfer of protection carried out in Member States – An analysis of practice

The following analysis of policy and practice in the field of transfer of protection for refugees in Member States is drawn from the information, which has been obtained during the course of research for this study through questionnaires and interviews with the relevant national administrations and additional sources. It covers the situation in the fifteen Member States, which were part of the EU at the time of embarking on this study and the Slovak Republic, which was a candidate country when the main part of the research for this study was carried out, but is now a full Member of the EU. For comparative reasons, Switzerland is also included in the analysis.

2.1. Ratification of relevant international and regional instruments

2.1.1. 1951 Convention and its Schedule

All Member States have ratified the 1951 Convention. On ratification, however, **Finland** entered a reservation to Article 28 and this provision as well as the provisions of the Schedule relating to transfer of responsibility for the issuance of travel documents are therefore not applicable in Finland. Finland is currently in the process of negotiating the lifting of this reservation and has in practice issued Convention Travel Documents to Refugees recognised under the 1951 Convention, including to those in relation to whom Finland has accepted transfer of responsibility for the issuance of travel documents in accordance with the European Agreement on transfer of responsibility for refugees.

2.1.2. The European Agreement on Transfer of Responsibility for Refugees

Nine (9) states (**Denmark, Finland, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and The United Kingdom**) out of 16 Member States covered by this study have ratified the European Agreement on Transfer of Responsibility for Refugees. Three (3) states (**Belgium, Greece and Luxembourg**) signed but never ratified the Agreement. Four (4) states (**Austria, France, Ireland and the Slovak Republic**) have neither signed nor ratified the Agreement. Of the 10 states that became members of the EU on 1 May 2004, just one, the **Czech Republic**, has signed the Agreement.

The **French** authorities interviewed for the study stated that there have been no real objections to adopting the Agreement, but that France just never came around to sign and ratify it. The question of ratifying the Agreement is not really an issue which is currently up for debate or discussion in France. The French authorities seem to be of the belief that the Agreement is not functioning very well. **Belgium** signed the European Agreement on 16 October 1980. However Belgium has never ratified the Agreement although, according to the persons interviewed for this study, there seem to be no obvious, politically motivated obstacles to ratification. Current Belgian policy and practice in the

field of transfer of responsibility for refugees are close, though not identical, to the principles and criteria laid down in the European Agreement. Belgian authorities seem to observe a lack of clarity in certain areas of the Agreement. The persons interviewed in **the Slovak Republic** indicated that if the European Agreement had been part of the EU *acquis* it would probably have ratified it prior to enlargement. As this was, however, not the case, Slovakia does not see it as a priority to adopt this instrument now. **Austria, Greece, Ireland and Luxembourg** gave no reasons for not ratifying the European Agreement.

2.2. Application and implementation of international and regional or bilateral standards in general

Most of the states examined in this study seem to attach relatively little importance to the issue of transfer of protection status. With a few exceptions, it was therefore quite common to find that the transfer issue received little attention from most officials until they were notified of the fact that we were conducting this study for the European Commission, and we requested an interview with them or their time for completion of our questionnaire. In general, this issue has been considered a relatively minor aspect of refugee and asylum law. The main reason for this would seem to be the relatively small numbers of formal transfers that take place.

State parties to the *European Agreement on Transfer of Protection for Refugees* have generally more clear standards for transfer – at least with regard to transfers from other state parties to the Agreement - than have states, which are not parties to the European Agreement. In most of the states that are parties to the European Agreement, this is in practice also the only instrument that - in principle - clearly governs the question of transfer of responsibility.

With regard to transfer of responsibility in cases that are *not* covered by the European Agreement, the over-all situation remains unclear. Although the relevant provisions of the Schedule to the *1951 Convention relating to the Status of Refugees* in principle apply directly in most states, they seem only to be fully applied in a few (**Denmark, Germany, Luxembourg and Spain**⁶⁷). In most states policy and practice regarding implementation of the provisions on transfer responsibility of the 1951 Convention and its Schedule, if at all, seem to be developed - directly or indirectly - on the basis of a case-by-case approach and, to a large extent, left to discretionary decision-making. This was previously the case for most transfers – a situation which led to the adoption of the European Agreement in 1980. This case-by-case approach represents a somewhat defective implementation of the relevant provisions of the Convention. Some states (**Austria,**⁶⁸ **Belgium, Sweden**)⁶⁹ and

⁶⁷ Germany and Luxembourg apply the Schedule in a relatively liberal manner in that transfer of responsibility is accepted already upon grant of lawful residence irrespective of whether the Convention Travel Document issued by the first country of protection has expired or not. Denmark consider transfer of responsibility to be limited to responsibility for the issuance of travel documents.

⁶⁸ With regard to transfers from countries with which bilateral agreements to this effect have been concluded.

Switzerland) do however apply principles similar or close to those of the European Agreement to requests for transfer of responsibility to those cases.

With the exception of Austria, the relevant provisions of the *bilateral agreements* concluded in this area seem to have very little importance in practice.

In all Member States the *competent authorities* in matters relating to transfer of protection are identical with those normally dealing with asylum requests and the issuance of travel documents.

Clarity as to the *actual application in all particulars* is lacking in most states - whether they be parties to the European Agreement or not. This is in large part due to the fact that they have very sparsely detailed guidelines. The general lack of in-depth knowledge of the concrete caseload, which prevails in most states, whether they are parties to the European Agreement or not, makes it difficult to come to any precise conclusions on the nature and degree of implementation.

It may nevertheless be concluded that, with the exception of Greece, all Member States acknowledge some degree of obligation to accept formal transfer of responsibility for refugees who move from one contracting state to another and obtain regular residence there.

Clear national provisions and guidelines relating to the implementation of the European Agreement vary. Nonetheless, it may also be concluded that it is beyond any doubt that the principles and criteria of the Agreement provide a solid basis for determining transfer of responsibility for refugees in the countries that are parties to the Agreement. The situation in this respect differs considerably from the situation in States that have not ratified the Agreement, and from situations in which the Agreement does not apply because the refugee has arrived from a country of first protection that is not party to the Agreement.

Further, when interviewed for this study, officials of the States party to the European Agreement generally voiced the opinion that the criteria operated by this instrument are acceptable and that they see the instrument as being very useful. Some find that the Agreement need some elaboration in particular regarding bilateral procedures and access to exchange of information. Access to (subsequent) exchange of information or files was seen as particularly important in order to secure fair decisions in situations where questions of cessation or revocation exceptionally emerge. Generally, however, state parties expressed the opinion that any future regulation amongst the EU Member States should be framed around the 1980 Agreement. They also expressed regret that not all European States have ratified it.

⁶⁹ in actual practice

Table 3: Nature and degree of implementation of international and regional legislation on transfer of responsibility

	1951 Convention and Schedule	European Agreement	Bilateral Agreements	"variant" national legislation or practice	Comments
Denmark	Direct application Internal guidelines	Direct application Internal guidelines	N/A	-	But for the question of <i>scope</i> of transfer, in keeping with standards of 1951 Convention and European Agreement
Finland	N/A	Transposed into national law	N/A	-	Reservation to Article 28 of 1951 Convention
Germany	Direct application at federal state (länder) level	Direct application at federal state (länder) level		Administrative practice	With slight modifications, in conformity with 1951 Convention and Schedule standards – no distinction between Parties and non-Parties to the European Agreement. Uniform application not secured as no central guidelines
Italy	Direct application No guidelines (no practice)	Direct application through administrative practice and case-law	N/A		Not clear how the relevant provisions of the 1951 Convention and its schedule would apply in all its particulars where European Agreement does not apply, but for the fact that international obligations in this field in principle will be honoured
Netherlands	Not implemented (no known cases)	Directly applicable Guidelines issued	Directly applicable Guidelines issued		Presumption is that requests for transfer outside the European Agreement will be rejected
Portugal	Not implemented	Direct application (no practice)	N/A		No legal basis for transfer outside the European Agreement
Spain	Direct application Case-law	Direct application; Case-law	N/A		With slight modification in conformity with standards of 1951 Convention and European Agreement
Sweden	Direct application	Direct application; Internal guidelines	N/A		Application and practice not clear in all particulars In reality probably close to European Agreement standards No distinction between parties and non-parties to European Agreement

United Kingdom	Not implemented	Direct application; Guidelines issued	N/A	Guidelines	With the exception of a limited access to transfer upon the exercise of discretion of the Home Office in cases showing compelling compassionate circumstances or particular links to the UK, no legal basis for transfer of responsibility beyond the scope of the European Agreement
Austria	Direct application Internal guidelines	N/A	Direct application; Internal guidelines	Article 83(2) of the Aliens Act	
Belgium	Partly	N/A	No information	National legislation	Close to standards of the European Agreement
France	Direct application; Administrative practice and case-law	N/A	No information	-	Close to 1951 Convention and Schedule standards
Greece	Not applied	N/A	N/A	-	No legal basis for transfer
Ireland	Direct application; administrative practice and case-law (no practice)	N/A	N/A	-	No national legislation or guidelines have been adopted
Luxembourg	Direct application; Case-law and administrative practice	N/A	No information	-	Close to 1951 Convention and Schedule standards
Slovak Republic	Adapted national legislation; Case-law	N/A	N/A	Administrative practice	No specific legislation or guidelines have been adopted Practice only partly in keeping with 1951 Convention standards
Switzerland	National legislation; Case-law	National legislation; Case-law	No information	Administrative practice; Case-law	Practice only partly in keeping with 1951 Convention standards

2.3 Level of transfers

With the exception of **Belgium**, States do not keep or release official statistics on data concerning the formal transfer of responsibility for issuing travel documents for refugees. The reasons given have mainly been related to the presumed low number of cases. This has led authorities not to prioritise the keeping of statistics in this area. Another low-number related explanation, in the case of the United Kingdom, is the difficulty of ensuring anonymity for the individuals concerned when numbers are so small.⁷⁰

⁷⁰ The fact that data are not kept fed into the difficulties authorities had in assisting us in finding refugees who had transferred to be interviewed for this study.

A few states were, nevertheless, able to identify, within their administrations, a total number of cases in which transfer of responsibility to that country was accepted during the last three to five years. In most cases, however, the figures given were based on estimates provided by the officials dealing with those cases in practice, and are, at best, approximate. (This may explain the rather high estimate given by **Sweden** – which was reconfirmed). In some countries, the picture was so unclear that it was not possible for the administrations to give any, even rough, figures. Available information relating to numbers of requests (as opposed to grants), reasons for moving, nationalities of the refugees and countries of first protection, which was part of the themes for the interviews and the questionnaires, is even less complete. Only a few countries were able to provide relevant data in this regard.

Table 4: Number of cases accepted for transfer

	1999	2000	2001	2002	2003	Main countries of origin	States of 1 st protection	Main links to 2 nd State	Comments
Denmark	+/- 20	+/- 20	+/- 20	+/- 20	+/- 20	-	-	Family	Rough estimates by interviewees
Finland	?	?	?	?	?	?	?	?	No numbers available. "Very few" since ratification of European Agreement in 1990
Germany	?	?	?	?	?	?	?	?	No central statistics or numbers
Italy	Three (3) since 1996					Somalia Romania	F, D	Work	
Netherlands	?	?	?	?	2 (+)	?	?	?	No statistics Estimate: very few
Portugal	0	0	0	0	0	-	-	-	No practice
Spain	Six (6) in total					?	S, I, UK, F, D	Marriage	
Sweden	100-200	100-200	100-200	100-200	100-200	?	?	Family	Rough estimates by interviewees
United Kingdom	?	?	around 20			?	?	Family Work	Around 30 applications last three years No available official statistics or details
Austria	?	?	?	?	?	?	?	?	No statistics Estimate: few
Belgium	8	15	11	4	14		D, F, I, Africa ⁷¹	Family	Statistics
France	+/- 25	+/- 25	31	40	+/- 25	?	Africa ⁷² - less EU	?	No statistics - estimates for 1999, 2000 and 2003.
Greece	0	0	0	0	0	-	-	-	No formal transfers ⁷³ .
Ireland	0	0	0	0	0	-	-	-	No practice
Luxembourg	< 20	< 20	< 20	< 20	< 20	?	?	?	Rough estimates by interviewee

⁷¹ Refugee status recognised by State parties to the 1951 Convention

⁷² Refugee status recognised by State parties to the 1951 Convention

⁷³ A few cases where refugees, on basis of recognition of status by another contracting State, were eventually granted residence permit as (legalised) migrants in order to prevent refoulement.

Slovak Republic	0	0	0	0	0	-	-	-	No practice
Switzerland	13	15	7	7	10	2003: Turkey Sri Lanka Laos	F, D	Marriage	

However incomplete the available information may be, it can be concluded that the total number of formal transfers is probably not large. With the exception of **Sweden**, which reports 100 - 200 transfers every year and possibly also **Germany**, which is not able to give even estimates on the actual extent of practice, States generally accept transfer in no more than 25 cases a year (**France**). In most states the number is much lower. Four states (**Greece, Ireland, Portugal and the Slovak Republic**) had no cases from 1999 to 2003. The small number of requests estimated by some of the interviewees may furthermore indicate that the total number of requests for transfer only exceeds the number of accepted cases by a very small margin. This situation might both mirror and play into the reality for refugees. Potential beneficiaries of transfer might be discouraged from even applying for a transfer, either because they (or their advisors) are not familiar with the limited access to formal transfer under the current agreements, or because they have received inadequate counselling due to the lack of clear national guidelines and general acquaintance with this area.

Some of the government and UNHCR officials interviewed for this study said that the extent of refugee movement across internal EU borders could be much larger than is expressed in the numbers appearing in state provided statistics on formal transfers. Many refugees may move regularly on the basis of a residence permit obtained on grounds of e.g. marriage or work in a second country, but never apply for a transfer of status because the first country continues to renew the individual's travel documents. Others may move without disclosing their refugee status out of (maybe unjustified) fear of being returned to the first country of protection once the fact that they have refugee status becomes known to the second state. Reference to onward movements of recognised refugees within the EU "which occur in practice but whose frequency is impossible to measure" was made in the **EU Commission Staff Working Paper: Evaluation of the Dublin Convention**⁷⁴. During the interviews for this study, a few references were also made to the alleged secondary movements of recognised Somali refugees (or with a subsidiary protection status) from the Netherlands to Denmark or to the United Kingdom and from Sweden to the United Kingdom, a situation which, amongst other factors, seems to be suggested by the fact that many have disappeared upon grant of residence in the first country of protection.

⁷⁴ Commission Staff Working Paper, **Evaluation of the Dublin Convention**, SEC(2001)756, p. 13, Brussels, 13 June 2001

2.4. Causes for movement and for request for transfer of responsibility

On the basis of the information provided by state administrations, it can further be presumed that, with a few exceptions, the formal transfers that take place are linked to a previously obtained residence permit issued on the basis of family links to the second country. There is, however, among state administrations, very little precise knowledge of possible motives for secondary movements other than family reunification. Refugees are generally not questioned about this when applying for transfer. Most of the officials interviewed for this study assumed that refugees probably were likely to consider secondary movements for reasons of community, linguistic and family links as well as for reasons of work and economy.

Summarising the most cited reasons of irregular secondary movements of refugees and asylum seekers by ExCom and other international fora, UNHCR, in its Convention Plus Issues paper on **Addressing irregular secondary movements of refugees and asylum-seekers**, lists the factors that, from the perspective of the refugee or asylum seeker, may prompt an *irregular* secondary movement:⁷⁵

- Compelling reasons for leaving his/her country of previous stay due to fear of persecution or because his/her physical safety or freedom is endangered;
- The desire to re-unite with separated members of his/her family;
- Lack of secure legal status;
- The absence of educational and employment possibilities, dependency on aid and/or low level of self-reliance in a first country of asylum;
- The non-availability of long-term durable solutions by way of voluntary repatriation, local integration and/or resettlement;
- Compounding any or all of the above, lack of access to legal opportunities to migrate

Important to note in this context though, is that rather than focussing on onward movements of refugees within the EU, this part of Convention Plus focuses on interregional onward movements.

2.5. Categories covered (Convention - subsidiary protection)

Transfer of protection status is in all States limited to *Convention refugees*, while persons under *subsidiary protection* do not benefit. Lack of harmonisation, the assumption of a very diverse application of subsidiary forms of protection across the Member States and the assumed temporary nature of the need for subsidiary protection are given as reasons for not extending rights of transfer to those categories.

In all **Member States**, which in their national legislation or case-law consider subsidiary protection, requests for travel documents lodged by persons who have been recognised by other States as being in need of subsidiary protection will normally only be granted,

⁷⁵ Forum/CG/SM/03 of 11 March 2004, para. 14 and 15.

when, upon *explicit request* of the person concerned, adjudication has been restarted and a full examination of the case led to recognition of protection needs. The **German** and **Spanish** officials interviewed for this study stated however that in the particular event of a deportation order being issued, their respective competent authorities would *ex officio* have to restart adjudication of protection, if there is any indication that return to the country of origin or the first country of protection might imply a risk of *refoulement*. The representatives of **the Netherlands** interviewed for this study said that it is unclear whether the *assessment of the first State of protection* in fact might be ascribed any importance in those cases.

2.6. Criteria for accepting transfer of responsibility for the issuance of travel documents

All the Member States that apply policies of transfer of responsibility for refugees operate with criteria implying that transfers should normally take place within no more than two years of stay or residence in the second country. Stays for specific short-term purposes such as studies and training normally do not count. Regardless of length of stay in the second state, expiry of the travel documents issued by the first country of protection or the obtaining of permanent residence in the second state normally leads Member States to accept transfer of responsibility. These criteria would in principle normally satisfy the requirements of the European Agreement, but most often not the criteria of the 1951 Convention. Furthermore, the “lawful residence” criteria of the 1951 Convention and the “actual and continuous stay” criteria of the European Agreement are not consistently interpreted and applied throughout Member States.⁷⁶

The application of the criteria determining the point of time for transfer of responsibility thus continues to pose problems despite the efforts and intentions which led to the adoption of the modified criteria of the European Agreement, which aimed specifically at addressing this question of interpretation.

⁷⁶ At the time of ratification, **Germany, Italy, Spain and the United Kingdom** made two reservations to the Agreement, declaring that, insofar as they are concerned, transfer of responsibility shall not occur for the reason that it had authorised the refugee to stay in its territory for a period exceeding the validity of the travel document solely for the purposes of studies or training (Article 14 (1) in conjunction with Article 2 (1)), and, further under Article 14 (1) that they will not accept a request for readmission presented on the basis of Article 4 (2), which stipulates that “if the authorities of the second State do not know the whereabouts of the refugee and for this reason are not able to make the request mentioned in paragraph 1 during the six months following the expiry of the travel document, that request must be made within the six months following the time at which the whereabouts of the refugee become known the second State, but in no case later than two years after the expiry of the travel document”.

Table 5: Main criteria for considering transfer of responsibility⁷⁷

	In relation to State Parties to European Agreement	In relation to transfers under 1951 Convention outside the scope of the European Agreement	In relation to countries with whom bilateral agreements have been concluded	Comments
Denmark	Two years of actual and continuous lawful residence	Upon grant of lawful residence	N/A	
Finland	Two years of actual and continuous lawful residence (permit)	N/A	N/A	
Germany	Lawful residence (permit) – a certain period of time not required	Upon grant of lawful residence.	N/A	Unclear whether or to which extent exceptions apply in case of stays for limited and short term purposes
Italy	Two years of actual and continuous lawful residence (permit)	Upon grant of lawful residence? Not yet clarified in practice. No specific national legislation or guidelines	N/A	Interviewees stated that Italy would honour its international obligations if requests for transfer outside the European Agreement arise.
Netherlands	Two years of actual and continuous lawful residence (permit)	No legal framework for transfer. Not yet clarified in practice	No legal framework for transfer	Presumably non-adherence outside scope of European Agreement
Portugal	Two years of actual and continuous lawful residence	No legal basis for transfer	N/A	
Spain	Two years of actual and continuous lawful residence	Upon grant of lawful residence with the exception of stays for limited purposes	N/A	
Sweden	Permanent residence in Sweden (which is granted after one or two years of lawful stay if for family reasons – otherwise permanent residence is only granted after eight years)	Permanent residence in Sweden (which is granted after one or two years of lawful stay if for family reasons – otherwise permanent residence is only granted after eight years)		In reality it is nearly impossible to obtain a residence permit in Sweden for other purposes than joining family
United Kingdom	Two years of continuous stay (visits abroad for up to six months included)	Strength of ties to the UK compared with first country of protection combined with compelling compassionate reasons		
Austria	N/A	Lawful entry	Residence for	

⁷⁷ Only criteria of main importance are included in this listing. Exceptions are not included.

		Travel Documents issued by first country of protection invalid	unlimited period of stay or two years of continuous lawful residence	
Belgium	N/A	18 months of actual and uninterrupted lawful residence for the purpose of indefinite stay	No legal framework	
France	N/A	Lawful residence Long term nature of purpose of residence	No legal framework	
Greece	N/A	No legal framework for transfer		
Ireland	N/A	Not yet clarified in practice		
Luxembourg	N/A	Upon grant of residence with the exception of stays for limited purposes	No legal framework	
Slovak Republic	N/A	Permanent settlement and denial of travel documents from first country of protection		
Switzerland	Lawful residence	Two years of lawful residence		

2.6.1. “Two years of actual and continuous stay” of the European Agreement

With a few modifications, the state parties to the European Agreement in principle and/or in actual fact all seem to observe the “two years of actual and continuous stay” when faced with requests for transfer of responsibility from a refugee who was granted status by another state party to the European Agreement.

Denmark, Finland, Italy, the Netherlands, Portugal, Spain and the United Kingdom all apply the two years time frame of the European Agreement to requests for transfer covered by this Agreement.

Germany and Switzerland normally accept responsibility already at the time of granting lawful residence within their respective territories.

Sweden, in principle, only accepts responsibility in cases where the refugee has already obtained a permanent residence permit in Sweden. Although, considering the actual caseload, a permanent status and thereby also transfer seem to always be granted after one or two years of lawful stay, this criterion is in principle at odds with those of the European Agreement.

2.6.2 Application of the “Lawful residence” criteria of the 1951 Convention

Member States’ application of the criteria for transfer of the 1951 Convention and its Schedule where the European Agreement does not apply, varies considerably and does not always seem to conform with the “lawful residence” criteria for transfer of responsibility of Paragraph 11 of the Schedule.

Denmark, Germany, France, Spain and Luxembourg normally accept transfer of responsibility *immediately upon grant of lawful residence* in their respective territories (with the exception of short term stays for limited purposes). For **Denmark and Spain** this is only so where the European Agreement does not apply. In those States, transfer of responsibility for the issuing of travel documents thus happens earlier in cases where only one or none of the involved States are parties to the European Agreement, than in cases where both the first and the second State of protection are parties to the European Agreement.

With some modification **Austria** in principle applies Paragraph 11 of the Schedule to cases where the two bilateral agreements (which have time frames similar to that of the European Agreement) with France and the Benelux countries do not apply.

Belgium is operating an 18 months time frame. **Sweden** requires permanent residence, which in practice is given within one or two years to the current caseload of new arrivals who will qualify. **Switzerland** applies a two years time. As long as these cases in actual fact mainly concern refugees who have obtained lawful residence on basis of family links, which would normally indicate an indefinite nature of the stay, none of the agreements are in conformity with the requirements of the 1951 Convention. They would however be in conformity with the requirements of the European Agreement had this instrument been applicable.

Italy has not clarified its position with regard to cases where the European Agreement does not apply and reports no cases within this category. It maintains however that it will honour its international obligations if requests for transfer outside the scope of the European Agreement arise. **Ireland** has not clarified its position and has not yet seen any requests for transfer.

The Slovak Republic only applies Article 11 under certain conditions. **The United Kingdom** would only on a very exceptional basis apply Paragraph 11 to requests for transfer outside the scope of the European Agreement. **The Netherlands'** position is not clarified, but reported that it would probably not apply Paragraph 11 directly to requests for transfer outside the European Agreement. **Greece** does not apply Paragraph 11.

In **France and Belgium**, the Aliens Authorities have discretion to determine when and if residence should be interpreted as being for the purpose of a stay of limited duration. This certainly limits transparency and may also indirectly imply violation of the “lawful residence” criteria of the 1951 Convention, depending on how the requirements of “long term nature” and “purpose of indefinite stay” are being applied and whether in

conformity with legitimate exemptions to the obligation of accepting transfer of responsibility upon grant of lawful residence.

2.7. Scope of transfer of responsibility

The implications of transfer for the status of the refugee and for the scope of responsibility transferred to States under the 1951 Convention and the European Agreement are issues that still seem to need some clarification as states, despite relatively consistent practice, apply somewhat different interpretations and understandings to the principles involved.

2.7.1. Application of extraterritorial effect to refugee status determination carried out by other State party

Ten Member States - **Belgium, Finland, France, Germany, Italy, the Netherlands, Portugal, the Slovak Republic, Spain, Sweden and the United Kingdom** – as well as **Switzerland** state that they, in principle, adhere to the UNHCR Executive Committee Conclusion No 12 (XXXIX) – 1978 on “extraterritorial effect of the determination of refugee status”. They say, therefore, that they, implicitly or explicitly, would recognise the refugee status determined by the previous country of protection in cases of transfer of responsibility for issuing travel documents. **Portugal** also states that it would, in connection with the examination of the request for transfer, establish contact with the first State of protection in order to obtain information about the refugee’s situation and “probably” also the grounds for granting asylum. The extent to which this might indicate a substantive examination of the grounds for recognising refugee status in the first place is not clear.

In **Luxembourg**, the examination of an application for transfer will, in principle, contain a short analysis of the grounds on basis of which the person claims refugee status. In practice, however, this examination seems, according to the information received, to be rather formal, and only where particular circumstances or apparent ambiguities indicate that the refugee status has been cancelled or cessation and exclusion clauses may in fact apply, the application will be examined more thoroughly.

Ireland has no clear position on the question of extraterritorial effect of refugee status determination carried out by another state.

Greece applies extraterritorial effect to a refugee status determination carried out by another state party to the 1951 Convention to the extent that she, in respect of the principle of non-refoulement principle, eventually would allow the refugee to remain in Greece. This would however be with the status of a “legalised migrant” and not as a refugee.

Denmark and **Austria** do not apply extraterritorial effect to refugee status determination carried out by a first state of protection in cases of transfer. Denmark cites the lack of explicit provisions to this effect and Austria refers to the non-binding character of ExCom Conclusions.

All Member States, except **Austria** and **Denmark**, as well as Switzerland state that *cessation and exclusion clauses as well as provisions on cancellation that are generally applicable refugees in their countries* would also apply to cases of transfer. With one exception (**Spain**), questions of cessation, exclusion, cancellation and revocation are not examined automatically in connection with the examination of the request for transfer, but only in the presence of concrete indications that one of these clauses may be applicable.

2.7.2. Scope of transfer of responsibility for protection

The majority of states extend full protection rights under the 1951 Convention once transfer is accepted and only see the issuing of travel documents as part of their obligations under European Agreement and the 1951 Convention towards refugees residing in their countries.

Eleven of the Member States studied here - **Belgium, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Portugal, the Slovak Republic, Spain and the United Kingdom** - plus **Switzerland** - thus consider transfer of responsibility for the issuing of a travel document to imply that the second state must grant the refugee the protection, rights and advantages flowing from the Refugee Convention. Upon acceptance of transfer of responsibility for the issuance of travel documents, refugees will automatically be treated on a par with refugees who have been recognised and granted asylum through regular refugee status determination and asylum procedures.

In **Sweden**, the extension of full rights would only be done following a separate application. The issue has neither been clarified in practice nor in the guidelines issued on the application of the European Agreement. The Swedish officials interviewed for this study were, however, of the opinion that full protection would be granted as a matter of course if the refugee submitted an application. The question of whether or not to grant full protection to refugees in relation to whom responsibility for the issuing of travel documents have been accepted has also yet to be clarified in **Ireland**.

Two States - **Denmark** and **Austria** - consider that the first state, in principle, would have to continue being held responsible for protection under the 1951 Convention beyond the issuing of travel documents. In explaining this position, Denmark refers to the absence of explicit provisions to the contrary in international and regional instruments. If the refugee fears refoulement or is, for other reasons, not able to return to the first state of protection, he may apply for asylum in Denmark and his application will be examined under regular asylum procedures.

As described above, **Greece** does not accept transfer of responsibility from other contracting states neither for the issuance of Convention travel documents nor for any other protection rights flowing from the 1951 Convention. Refugees who have been recognised by another state party to the 1951 Convention, but can not be returned due to the principle of non-refoulement, will – beyond the protection against refoulement – only receive treatment as ordinary migrants.

Several states (**Belgium, Portugal and Spain**) which either stated that they would in any event automatically extend full Convention rights to the refugees accepted for transfer under the European Agreement, or said that they in principle (probably) would do so upon explicit request by the refugee concerned, expressed uncertainty as to whether they were actually required to do so under the European Agreement, whether it was an obligation under the 1951 Convention or whether it was a matter to be decided at national level.

Table 6: Implication and scope of transfer of responsibility

	Transfer limited to responsibility for the issuance travel documents only	Imply recognition of extraterritorial effect of refugee status determination carried out by first State of protection	Transfer of responsibility for travel documents implying full responsibility for granting all rights flowing from the 1951 Convention	Comments
Austria	X	-	-	
Belgium		X	X	
Denmark	X	-	-	
France		X	X	
Finland		X	X	
Germany		X	X	
Greece	-	(X)	-	No direct policy and practice on transfer
Ireland		?	?	Position not yet clarified
Italy		X	X	
Luxembourg		(X)	X	In principle no extraterritorial effect, in practice extraterritorial effect
Netherlands		X	X	
Portugal		(X)	X	Unclear in relation to extraterritorial effect – not clarified in practice
Slovak Republic		X	X	
Spain		X	X	
Sweden		X	(X)	Extraterritorial effect on application Probably full rights on application, not clarified in practice
Switzerland		X	X	
United Kingdom		X	X	

2.8. Bilateral proceedings

The main concerns expressed by some states relating to the implementation of the European Agreement relate to sparse provisions on bilateral procedures and the lack of rules concerning exchange of information between the first and second state relating to the initial refugee status determination. This is seen as particularly important in relation to finding practical solutions to situations of cessation, exclusion, cancellation and revocation of refugee status. As the present situation is unclear and without clear provisions, some States voiced the concern that it may not currently be possible to apply the above concepts in a fair and efficient manner and that any future regulation or possible amendment to the European Agreement should include considerations in this regard.

A few states mentioned that Article 5 (2) of the European Agreement, which stipulates that the second state shall inform the first state when transfer of responsibility has taken place is not being implemented effectively.

2.9. Rules relating to unaccompanied minors

None of the states covered by this study operates particular rules in relation to unaccompanied minors who request transfer of protection responsibilities.

2.10. UNHCR and NGO involvement

Beyond counselling of refugees, who may approach them for advice, UNHCR and NGOs are, with a few exceptions, not involved in transfer of protection cases. A UNHCR representative in **Spain** attends the meetings of CIAR in a consultative capacity. In **Switzerland, Germany** and **France**, UNHCR may be consulted in the course of procedures, for example if doubts concerning refugee status persist in a specific case.

3. The Refugee Experience

Thirty-nine cases have been identified and investigated for the purposes of this research, according to the methodology set out in the Introduction. Those 39 cases were distributed as follows:

- The Netherlands (6);
- The United Kingdom (4);
- Spain (3);
- Italy (8);
- Austria (8);
- Germany (3); and
- France (5)
- Slovakia (1)
- Denmark (1)

Among those interviewed only very few (i.e. six individuals) fulfilled the precise criteria of having moved to a second country (or being in the process of doing so) and having sought transfer by requesting a new Travel Document after a period of lawful residence. Cases in which people have moved after naturalisation are more common, as are those of people who wished to move, but eventually in fact remained in the country in which their refugee status had been determined. It should also be noted that the respondents were not always clear on the exact nature of their status as Convention refugees or people with subsidiary protection. However, unless stated otherwise the abstracts of interviews provided here pertain, to our best knowledge, to refugees with Convention status.

The consequences of the Dublin regulation were part of the substance of a number of interviews, and specific experiences were relevant in three cases. There are indications that the country in which an asylum request is made as a result of “Dublin II” Regulation requirements (and previously Dublin Convention) might not necessarily be the country of habitual (but irregular) residence within the EU of the asylum seeker. Thus, an asylum claim may be lodged in the country deemed responsible under the Regulation, but the asylum seeker might not actually be residing in that country either during status determination, or after refugee status has been granted. Furthermore, it was pointed out by all refugees whose cases were deemed to be the responsibility of a Member State other than the one in which they made their application, waited for up to a year in Member State ‘A’ before being transferred to (taken back by) Member State ‘B’ where they were subsequently recognised. In other words, even when ‘taken back’ the asylum seeker might return to the first Member State, where he or she wants to be, while their case is being processed in the Member State deemed responsible for assessing the claim. This in itself is unpleasant for the refugee and would seem to be inefficient in terms of time and money. It also means that the individual refugee is, in at least some cases, being granted refugee status by a state in which he or she does not reside, and residing, probably unlawfully, in a second state, to which his or her status cannot be transferred, because the residence is unlawful. The individual is then left with refugee status, but no place of lawful residence.

Our sample is strongly biased towards males and towards refugees of Somali and Kurdish (especially Iraqi) origin. We have no reason to expect this to imply a bias in our findings. It should be born in mind, however, that origin might have an impact on the propensity to migrate further upon acceptance as a refugee if there are, for instance, linguistic or other cultural links with a particular European country. We did find indications, for instance, for a high potential for mobility among Somali refugees towards the United Kingdom.

Below we set out to present a cross-selection of the experiences of refugees who a) are or have been **thinking about moving** elsewhere some time upon their recognition as a refugee; b) have been looking for opportunities to move to a third European country, have **decided and are hoping to move** but (as yet) have failed to find a legal way of doing so; c) have identified or are in pursuit of means to move from their country of asylum to a third country, **are moving or have moved**; d) have **transferred** their **protection** status successfully.

3.1 Thinking about moving

We identified a relatively large number of refugees who share the feeling that their future should rather lie in a country other than the one in which they found protection in. In some cases they ended up residing in – from their point of view – the “wrong” country because this simply was the first one where they could find protection. In other cases, they did have original preferences but the implementation of the Dublin Convention and Regulation meant those preferences could not be pursued. In further cases, refugees became frustrated over time, as they could not lead the fulfilling lives they expected in the country in which status had been granted.

At the age of 28 Mr A. fled Somalia. In 1993 applied for asylum in France. He came from the English speaking part of Somalia, which was why he would have preferred to seek asylum in the United Kingdom. During the six months it took for the French authorities to investigate his application, he sought counsel from several friends who made clear to him that settlement in the UK was only possible on the basis of family reunification. Upon being granted refugee status, Mr A. applied for a tourist visa for the UK and went there. During that visit he did not get the impression that opportunities for work were much better in the UK than in France. Moreover, access to education and welfare appeared to be easier in France. Since then he has reunited with his wife and children, who now attend school in France. Even though Mr A. still entertains hopes of moving on to the UK one day, he understands he is now *de facto* tied to France, and has become “immobile”.

Mr C., a 24 year-old refugee from the Darfour region in Sudan, was granted asylum on humanitarian grounds by the Italian authorities in 2004. He presently lives in Rome. He has no clear idea about his legal position, which he expresses as follows: “I don’t have a lawyer (...) I think it is temporary but I am not sure. Anyway, I don’t care. I want to move on. Maybe I can go to school in England? Ask for papers? I don’t know. I like talking English. I go to the Vatican very often and then talk with the tourists. (...) I don’t know but I think in Italy there is no future for me, for young people in general.”

In 1999, at the age of 19, Mrs B. joined her husband in Denmark. Both husband and wife were from Iran. Her husband had already been granted refugee status in Denmark before she arrived to marry him. After some time, the marriage ended in a divorce. Mrs B. then applied for asylum herself, and was granted subsidiary protection. She subsequently married to another husband with whom she had a child. Her second husband turned out to be extremely violent. This marriage was also dissolved. However, Mrs B.'s second ex-husband kept threatening her, and spoke of his intention to kill her and abduct their child. Meanwhile, Mrs B. had no further relatives or friends in Denmark. She did, however, have contacts with Iranians living in Sweden. To flee her second ex-husband and seek support from these acquaintances in Sweden, she hopes to be able to move there. Another important reason for her desire to leave Denmark is the strict rules the Danish authorities currently apply for family formation. Mrs B. has wanted to marry her childhood sweetheart from Iran but cannot fulfil the requirements to bring him to Denmark to join her. In Sweden, she could expect to meet the requirements. She contacted the Swedish authorities to find out about the possibility of moving there, and was told this would be possible if she were to find employment there. As her primary concern is for the well being of her small child, finding employment and housing in Sweden at present still appears bothersome and moving is not an option she feels able to pursue.

Mr E. is a refugee from Colombia. He left his country in 1990 and applied for asylum in France. In due course his request was turned down, upon which he moved to Belgium. There he applied for asylum again in 1993 and was again rejected in 1995. Subsequently, he tried once more, this time in the Netherlands, where his claim was finally recognised one year later. Meanwhile, Mr E has become a Dutch national. In 2003 he married a Colombian woman. He wants to unite with her but has found that this is very difficult in the Netherlands. He has difficulties meeting the financial requirements for family reunification. To resolve this situation he is currently investigating moving to another European country (specifically Spain or Belgium) as he expects the hurdles there to be lower.

Mr U (aged 32) is originally from Iraq. He arrived in the Netherlands in 1998. There he applied for asylum and was recognised in late 2003. He feels rather unhappy in the Netherlands. He sees around him, among his friends and acquaintances, that finding a job or more education is very hard. Although he is a qualified engineer, the Dutch language is a major obstacle and thus Mr U. expects that better opportunities might be available to him elsewhere. However, he has not as yet made further enquiries and financial restrictions keep him from going abroad to look for opportunities.

Mr V (31) also hails from Iraq. His experiences are very similar to those of Mr U. but he has actively been looking for information about the situation in other EU Member States. He expects more opportunities for self-development in the United Kingdom and Germany. In order to learn more, he has paid visits to the British and German embassies in The Hague. He knows, for instance, that in Germany people are allowed to work while awaiting the outcome of their asylum request. Both embassies referred him back to the Dutch Refugee Council, however. For now he is at a loss. His own conclusion to date is that it is very difficult for refugees to move. The only times he says he has witnessed such moves they were for family reunification purposes.

Mr O. is a refugee from Afghanistan who was recognised in Austria in 2003. He had had no preference for a country of settlement provided it was a safe country. Relatives had arranged his trip and smugglers took him to Oslo. He stayed there for ten months while the Norwegian authorities pursued a Dublin-claim on the Austrian authorities because Mr O. had transferred through Vienna airport. By the time of his expulsion to Austria, he would have much preferred to stay in Oslo. He felt that otherwise he would have lost precious time; for himself to build a new life but, more importantly, because the Dublin-claim meant a delay in the family reunification process, leaving his wife in a vulnerable position back home.

3.2 Decided/hoping to move

There are those refugees who want to move within Europe to (re)unite with family members, or who have other immediate reasons to move on. And there are those who have been pondering a move to a third country for some time and have reached the conclusion that such a move would indeed be in their interest. Both, however, may find this not to be as easy as they hoped. As has become clear in this study, such a move is only legally possible if a number of requirements have been satisfied. Moreover, the refugee needs to be informed about opportunities and requirements. Here we present a number of obstacles refugees indicate that they run into in such circumstances.

Mr G. grew up in Iraqi Kurdistan. Aged 28, he had to flee his country in 2000 and ended up applying for asylum in Sweden. The flight he arrived on had come through Milan and the Swedish authorities thus saw cause to file a Dublin claim towards Italy. Before the “return” to Italy could be effected, which took a year, Mr G. fell in love with a woman from Iraq who was living as a refugee in Sweden. Lacking the necessary documents, they contracted a common-law relationship; this, however, could not prevent his expulsion. He was recognized as a refugee in Italy. Subsequently, he turned to the Swedish embassy for help. They told him that they could do nothing for him. The prolonged separation between the spouses has driven a wedge between them and Mr G. has meanwhile given up all hope for a happy ending. The fact that he has been naturalised as an Italian can no longer change that. However, it does allow him to visit his relatives who are scattered throughout Europe.

Mr Y. comes from Peru and was recognised in Spain in 1996 (after having spent a number of years as a refugee in Colombia). He is dissatisfied with the opportunities Spain can offer him. He is a journalist but finds that most of the work available in Spain is for the undocumented and not for refugees. Retraining to become an electrician was offered to him in the reception centre he stayed in, and even though such work is not at his level, he was prepared to accept such employment. He has found, however, that his age (45) has become a problem. Mr Y. sees how companies are not hiring people his age: yet he does not want a future based on welfare but on work. He, therefore, wants to move on but has not yet made up his mind as to which country he would like to go: the United States, Australia, Canada or the United Kingdom. He had not previously considered applying for Spanish citizenship (and relinquishing his Peruvian passport) “for sentimental reasons” but the prospect that this could quickly allow him the freedom to move within the Union has made him decide otherwise.

Mr S. (35) is from Liberia. He was recognised as a refugee in Slovakia in 1997. He feels very much at a loss in his present country of residence. He would have preferred to rebuild his life in an English speaking country, first and foremost the United Kingdom. He also would have liked to receive further training, which is not available in Slovakia. There are also very few black people in the country, and contacts with Slovaks are not easy. This makes him feel lonely and out of place. Among his fellow refugees, most sooner or later disappear from Slovakia. Mr S. has no knowledge about their motives or their destinations. He finds the Slovak integration system lacking; accommodation, job opportunities and welfare are all poor.

Mr S. is aware of a fundamental right to transfer to another country, information he gathered from refugee handbooks in libraries but has also gathered that he cannot work in EU-Member States with Slovakian refugee documents. In 1999 he paid a visit to the Dutch Aliens Police in The Hague to find out about the possibilities to study in the Netherlands. He asked whether they would grant him a temporary residence permit but was told that that would only be possible if he was a Slovak citizen. Mr S. has, meanwhile, applied for naturalisation but fears this may take a while. He is set to move on once he has become a Slovak national.

Mr L is in his early thirties and a refugee from Chechnya currently living in Austria. He settled in Austria by accident as it simply was the first safe country he could get to. He would prefer to live in the UK, among other things because he already speaks some English. Some months ago, he got a job offer from a British employer. When asking his social worker and his lawyer whether he could move to the UK without problems to take up this offer, their answer was negative. (Presumably, this indicates that he was granted subsidiary protection and not Convention status). The respondent was not very clear about this and possibly not fully aware of his precise legal position.

Mr K. is a refugee from Kurdistan and has relatives in a number of European countries who all had to flee their homeland at one time or another. Mr K. and his brother arrived in the Netherlands through the Dutch resettlement programme in 1993. His parents, and another brother and a sister were, at the time, still stuck in Turkey. Attempts were made to resettle them through the same process, thus reuniting the whole family in the Netherlands. To that end, the parents reported to the UNHCR offices in Ankara and awaited the return of the Dutch delegation. The climate in Turkey towards Kurds by that time had grown worse and the decision was made to get the parents out as quickly as possible before the Turkish government could decide to return them to Iran. The first opportunity that arose was when a Finish delegation went to Turkey selecting refugees for resettlement in Finland. Since then Mr K. has undertaken several attempts to reunite with his parents, brother and sister in the Netherlands. Reuniting in Finland was not much of an option for the family as Mr K. and his brother had already learned the Dutch language and were enrolled in professional training. The Dutch authorities rejected an application for family-reunification because at the time K. and his brother were over 18 years of age. After eight years of residence in Finland, the parents now qualify for naturalisation and plan to move to the Netherlands to be with their sons very soon.

Mr P was 19 when he arrived in the Netherlands from Somalia in 1994. He was granted temporary protection but finally qualified for naturalisation. In 2000 he became a Dutch citizen. He has been in several training schemes but got the feeling of having to start from scratch over and over again and not to be progressing towards useful qualifications for quite a while. Currently, he is in a training scheme for lorry drivers. If this brings him employment, he intends to stay in the Netherlands. If he does not find a job this time, however, he wants to move to Birmingham in the UK to join his common-law wife, who has recently given birth to their first child. If he remains in the Netherlands, they intend to unite there (his wife is a British national).

Mrs M. comes from Chechnya, and has been living as a refugee in Austria since 2002 (her status was recognised in 2003). She has contracted a common-law marriage with an Iraqi national who was denied asylum in Austria and who now lives in Belgium (again awaiting the outcome of an asylum request). A proper marriage, which would solve many legal problems, is not possible because they lack documents – including proof that they are not already married to anyone. Mrs M. has asked her lawyer about the possibility of moving to the Netherlands. He told her that this could be possible if she finds work, but that she would not receive social security benefits there. She has not yet decided whether she is actually going to look for employment in the Netherlands.

Mrs J is a refugee from Afghanistan in her forties. She applied for asylum in the Netherlands in 2001. Her husband, who remained behind, had arranged for her to be taken there because he had studied there in the 1960s and had retained good memories of the country. During her journey, her group was stopped at the Slovak/Austrian border. She was fingerprinted during this stop. This fact allowed the Dutch authorities to expel her after a two-year period to Austria, where she was granted protection after eight months (in 2004). She would have preferred to remain in the Netherlands because her daughter lives just across the border in Germany but understands it is currently impossible to realise this wish. Moreover, she can envisage a future for herself in Austria too.

3.3 Are moving/has moved

Once a refugee has made the decision to move and has identified the means by which this can legally be done, it is not necessarily the case that this move involves a transfer of protection. In fact, among those persons identified who actually moved the majority did so on legal grounds other than those available to those enjoying a refugee protection. For example, we came across individuals who had first naturalised in their country of first asylum and who subsequently made use of their freedom of movement within the Union. We also found some indications that there are refugees who move in an irregular fashion.

Family Z. came from Turkish Kurdistan. Their lawyer recounted how this family of nine was granted Convention status in Italy but was in no position to survive there with this number of children. In order to assist them, the lawyer arranged for them to move onwards to an undisclosed third country. In that country they again filed for asylum and were recognised. Fingerprints appear to have been checked but they triggered no hits. The risk of such a positive identification was calculated and would mainly have meant a renewed application in yet another European country. Transfer of protection was, for obvious reasons, never contemplated.

In 2003 Mr D. moved from Oslo to Birmingham. He originally comes from Somalia but was granted subsidiary protection in Norway in 1986. Since then he has been naturalised as a Norwegian citizen. In 1999 he graduated from Oslo University but could not find the employment he felt to be compatible to his degree. Moreover, he was frustrated by the fact that in school his children were forced into Christian religious education for two hours a week. These compounded issues made him decide to move elsewhere. After two visits, he had made up his mind and relocated with his family to the United Kingdom.

Mr I. was granted refugee status in Germany in 1984, the same year he arrived there from Eritrea. During the 1990s, Mr I. spent a prolonged period in the Netherlands as a student. During this time he met and fell in love with a Somali woman who earlier had legally and permanently settled in Amsterdam. They decided to live together in Amsterdam. To this end, they applied to the Dutch authorities for a residence permit for Mr I.; this request that was granted on the basis of “stay with partner”. At the same time, Mr I. noticed that his Germany issued refugee document stated that it would be revoked once the bearer moved his habitual residence abroad, to be replaced by a document issued by the authorities of this second state. In view of the fact that the residence permit for “stay with partner” was initially valid for one year (to be renewed), Mr I. interpreted this to mean that he would be expected to exchange his refugee protection status for a temporary residence status in the Netherlands, at least for the time being, as he was aware of the possibility to transfer his protection after spending two years in the Netherlands. He did enquire with the Dutch immigration authorities whether they could recognise his refugee status immediately but the reaction was that this would require going into the substance of his case, and he would have to provide documents that were on file with the German authorities. The idea of having to ask the Germans to hand over these documents did not appeal to him as it would bring to their attention his intention to move to the Netherlands. As he was also pursuing the possibility of naturalisation as a German citizen within the next few years, he did not want to jeopardise this by making known to the German authorities that he had actually already left. As a consequence of these deliberations, he decided that it would be best to let the matter rest and so he resided in the Netherlands irregularly. (He never went to collect his residence card from the Aliens Police).

Once Mr I. qualified for naturalisation in Germany he applied. Upon doing so, the local authorities did notice that he had been absent for a prolonged period of time but he could explain this by claiming to have lived in another municipality but still within Germany. When he was naturalized in 2003, he moved legally to Amsterdam.

In 1989 Mr Q. arrived in Denmark from Somalia. He was quickly recognised as a Convention Refugee. In 1999 he naturalised as a Danish citizen. Political developments made him feel increasingly unwelcome in Denmark. Even officials suggested to him that moving on could be to his advantage. He felt that the future of his children would better lie elsewhere and he relocated his family to the United Kingdom in 2001. He stayed behind in Denmark for two more years because of the pension for torture victims he enjoys. This pension only becomes exportable after fifteen years of residence, which was in 2004.

Mr. H. comes from Iraq and sought protection in Germany in February 1997. He was granted a temporary residence permit (valid for 2 years) in 2002. Meanwhile he had contracted a marriage with a Belgian national of Iraqi origin. She had naturalized in 2002. The marriage is common-law, as the necessary documentation (proof of not being already married and birth certificate) cannot be retrieved from Iraq. The wife came to Germany (Baden Württemberg) as was allowed settlement provided she earns Euro 1400 a month. After one year she may be granted a permanent residence permit. They have not considered the possibility to move to Belgium.

3.4 Transferred protection

Among those who moved, we could identify only few who appeared to have transferred their protection status from their country of asylum to their new country of residence. In most instances this transfer appears to have been concluded to the satisfaction of the refugees concerned, in one instance is clearly was not.

Mr W is a 36 year old Somali refugee originally recognised in Germany. He arrived in 1992 and was granted his status in 1995. He moved to France as a student in order to pursue a Ph.D. at the University of Lyon. After he got his degree he decided to remain in France. His transfer of protection, and the issue of a French Travel Document, came about flawlessly after two years of regular residence.

Mr F. is a refugee from Cuba who was recognised by Sweden in 1994. Since then he has moved to Spain because he feels more at home there, both culturally and linguistically. At first he was granted a residence permit in Spain because he had found employment. When his travel documents required their annual renewal the Swedish consulate would take care of that. When going there for the third time in succession he was told: "You are a foreigner now. You'll have to sort it out with Spain." This is when he applied for a transfer of his protection. Currently he is awaiting the outcome of this procedure but his lawyer is confident that it is going to work: "She says they have to give me transfer because I don't have my refugee passport anymore, neither my Cuban documents."

Mr T. is a 34-year-old refugee from Iran. He was recognised by the Italian authorities as a Convention Refugee in 1998. Subsequently, he met his current common-law wife who is a Dutch national. She was resident in Italy when they met. In 2001, the couple moved to live in the Netherlands. Mr T. applied for a permit to enter and request residence (MVV) for the Netherlands with the consulate in Rome. Once in the Netherlands, he was granted a residence permit for “stay with partner”. This permit is conditional upon the partner being employed but no further (labour market) restrictions apply. Mr T. found employment in a cleaning company.

After two years living and working in the Netherlands, Mr T. requested the transfer of his protection. The Dutch authorities dealt with this request in compliance with the 1980 Council of Europe “European Agreement” by treating him as a refugee requesting for admission to the country. Since under Dutch law recognised refugees have restricted labour market access during the first three years of their stay, these restrictions henceforth also applied to Mr T. who was consequently fired by his employer.

This situation posed a complicated challenge to Mr T and his partner. The latter had meanwhile lost her employment and thus a prolonged “stay with partner”, which would allow Mr T. to work, could become problematic at some stage. Transferring his protection would guarantee his residence rights, which is fundamental. However, this security of residence could only be sustained at the cost of employment barriers that previously did not exist. Mr T. was faced with a seeming choice between two statuses – it was a difficult choice. Regardless of the outcome of such deliberations: Mr T. feels that no real transfer of protection has been offered him for his material position is not remaining the same as it was in Italy, where no restrictions apply regarding labour market access for recognized refugees. His situation was also clearly not improved in any way. In fact, he feels that the Dutch authorities discriminate against him. After all, he reasons, refugees admitted to the Netherlands gain unrestricted access to employment after three years whereas he has been recognised as a refugee for almost twice as long – only he was recognised and initially resided in Italy.

The factual situation evolving from the documents issued by the Dutch authorities confused the matter even more. Mr T. had not only applied for transfer of his protection but earlier also for an extension of his residence permit “with partner”. The latter had already been granted (with an extension until 2008) at the point at which his transfer came through. The “stay with partner” residence permit was not revoked when his protection status came through. Mr T. feels that this cannot be right: he should, he thinks, only hold one residence title. As he sees it, every other situation could only be illegal and might even put his right of abode at risk. The authorities meanwhile did not further communicate to T. their point of view on the issues at hand. He does not know, therefore, whether in fact they intended to grant him both refugee status and full labour market access by issuing both documents. Mr T. feels forced to make his own decisions. He has decided to return to the authorities by registered mail his residence card for “stay with partner”.

3.5 In sum

Summing up the above interviews and statements made by refugees during those interviews that have not been reproduced here, the following tentative, general conclusions can be drawn.

3.5.1 *Motives*

Broadly speaking there appear to be three sets of motives for refugees to aspire to make a secondary move within the EU (or elsewhere like the USA). Firstly, refugees either had more or less clear preferences for a country of potential resettlement when leaving the country of origin (e.g. because of existing ties) but in fact had to request asylum in another Member State (e.g. because of the Dublin provisions) or developed such preferences soon upon arrival. As a rule, these refugees lack the legal possibilities to immediately follow such desires. This either means that refugees move on in an irregular fashion, do so on an unrelated legal basis (e.g. study) or stay put in the first country of asylum. In the latter case, this could result in adverse effects for the integration process of the refugees concerned. Cases have been identified in which at least the impression was given that such forced immobility can be wasteful in terms of human capital (e.g. where a refugee can not move to a country of which he already speaks the language or has accepted educational credentials) and in terms of government investments in integration measures. However, the flipside to forced immobility can be that refugees lose interest in moving to another country or increasingly develop ambiguous feelings about where their future might lie because they *have* more or less successfully integrated in their new country.

The second set of motives come in cases where integration has not progressed sufficiently or the pull towards a third country is too strong (e.g. in the case of family ties) the desire to move on in all likelihood remains present. In cases where this leads to a prolonged period of “misplacement” this clearly is neither in the interest of the receiving state nor does it serve the needs of the refugee.

A third reason why refugees consider movement lies in the different rights aliens (and sometimes nationals) enjoy across the EU, especially when it comes to family formation and reunification. If one Member State imposes higher barriers in this respect than others, the refugee may seek residence there in order to be able to exercise their right to family life.

Obviously the small number of cases identified does not allow us to draw generally valid conclusions. Among those who actually moved reasons given were cultural affinity, study and work. If we include those instances where refugees were considering a move to another country, had attempted to organize a move or had indeed moved, family formation and reunification is the most prominent reason. In general we have thus found people aspiring to move because they hope to fulfil their life’s potential and rarely because of “passive” pull-factors like (more) generous welfare facilities in a second state.

The exception would be these instances where more generous admission rights (especially pertaining to family formation and reunification) are, or would be, available.

3.5.2 Obstacles to transfer of protection: the need for full information

Sources of reliable legal information are often scarce or unknown to refugees. In effect, they often are not aware of the possibility of moving and, after a period of lawful residence, applying for a transfer of their protection status instead of biding their time until naturalization becomes an option. In those instances where they are aware of the options regarding the transfer of protection, they still may find it hard to get more and reliable information. This easily motivates refugees to abandon such plans.

Obstacles encountered in secondary movement and transfer of protection which respondents mentioned were generally related to the actual or perceived lack of accurate and trustworthy information about the possibilities to move within the European Union. Respondents reported having been confronted by uncooperative civil servants who told them to wait until they fulfilled the requirements for naturalization. We also came across cases in which the respondents felt the authorities were playing tricks on them, although in one of those cases at least (that of Mr T), the rules of the 1980 Agreement were certainly followed. This refugee did not feel fully informed of what was happening and was thus left uncertain about his position. The impression given was that this could have been avoided if the refugees could have had the feeling of a) being taken seriously, b) having independent access to trustworthy information and counselling. In some instances this was effectively remedied by engaging a lawyer, in other cases lawyers appeared (or were?) not competent enough to counsel their clients sufficiently. In yet other cases, respondents were not aware of the fact that they were being advised by people who were themselves not sufficiently informed and thus took no further initiative.

One other obstacle mentioned in several cases has no direct bearing on the procedures for the transfer of protection but still creates problems for refugees who seek to form or reunite families. It concerns those refugees who seek to contract a marriage and report having not been able to do so in a legally binding fashion because of a lack of documents. They therefore resorted to common-law or religious marriages. Movement to another country (where the spouse is a legal resident) on the basis of normal family formation rules thus became difficult or impossible.

3.5.3 Current strategies undertaken by refugees

In view of the above, it is not surprising to find that legal secondary movement of persons recognized as refugees often seems to take place only after the person has naturalized into a citizen of the country of first asylum in the EU. In several instances we were reminded of the importance refugees attach to being in an absolutely safe legal position; i.e. refugees may be very uncertain about moving to another state if the slightest suggestion

arises that this may jeopardize their refugee status - unless it can be replaced by the nationality of a trusted state. It should be noted, however, that secondary movement which takes place *de facto* prior to naturalization might not be identifiable as such because formal settlement, and transfer, does at first not take place.

3.5.4 Successes and best practices regarding transfer of protection

As noted above, while authorities might, as far as we could establish, act according to the relevant laws and regulations the refugees concerned do not always view this as necessarily “good practice”, not least because the information and full explanations is not made available to the refugees. In some instances, however, the refugees were content with the way in which their request for transfer was handled. The main characteristic of such cases is swift procedures with a minimum of red tape.

PART 3 - Future Scenarios

In Part 1 of this study we described and analysed the existing international legal obligations of Member States with regard to the transfer of protection. In Part 2 we explored current practice in the Member States and Switzerland, and the way in which some refugees who have wanted to, or actually have moved have experienced this. In Part 3 of this report, we will describe six future scenarios that could be the basis for developments to be considered by Member States. The scenarios are intended both to comply with existing obligations and to potentially satisfy any ambition to accord refugees lawfully resident in the European Union a right to move between Member States, similar to that of citizens and other long-term resident third country nationals. In other words, the scenarios are drafted to respond either just to the ‘reactive’ question posed in the Introduction, or to both the reactive and the proactive issues seen as emerging from a consideration of transfer of protection in the EU context. In addition, we will discuss the possible scenario for transfer of protection for refugees moving in either direction between Member States and non-Member States.

Our interviews with representatives across Member States, and the questionnaires returned by others, did not demonstrate either a great depth of existing thinking in this area or any consensus on the outlines we provided for the potential aims of future models. (The questions can be found in the Questionnaire appended to this report). Some Member State officials, but not all, saw the European Agreement as the baseline for future practice. Some Member States suggested that the number of people seeking transfer or indeed known to have moved is so low that the need for any agreement in this area was questioned. Others indicated that they do not know the actual extent of movement. Attention was drawn to the need for clarity on the conditions under which any transfers could take place, and clarity on the procedures leading to transfers, although the actual conditions or modes of procedures were not specified by many State officials, and where they were there was not significant overlap. Most Member States wanted to see some kind of agreements on transfer of responsibility for issuing travel documents: fewer officials indicated that they saw a need for discussion of transfer of actual status or protection. Some saw a need for a new mechanism even if the EU will have a common status and common procedures in the future; others thought there might be no need for a mechanism of transfer if that point is reached.

1. Between Member States

Six future scenarios can be sketched out for how Member States could deal with the transfer of protection status and/or free movement of refugees between their territories after the determination of refugee status in one Member State. These scenarios are:

- A. The refugee becomes an asylum seeker again in the second state
- B. The refugee is recognized as such without new procedures (as set out in the 1951 Convention)

- C. The refugee is dealt with in the same way as long-term resident third country nationals (whether LTR status is granted or not)
- D. The refugee is treated in the same way as EU nationals even if the refugee has not naturalized, and so does not have citizenship of a Member State (ie similar to the directive on free movement for EU citizens)
- E. The refugee's treatment in the second Member State is dependent on the reason for movement, and not on the protection claim.
- F. A new system is created for refugees to move and reside in the whole EU, as part of the Common European Asylum System

The first two scenarios (A and B) relate primarily to the second, reactive question set out in the Introduction namely:

If a person has moved from one (Member) State to another, and is residing lawfully in the second (Member) State, eg as a worker, or a family member of a legal resident, and, when they need a new travel document, they present themselves to the authorities of the second Member State saying – I have a previous travel document from the first State, where I was recognized as a refugee – how does the second State have to respond? Does the response involve accepting responsibility for the protection of the individual as a refugee?

As described in the Introduction and Part 1 of this study, 'responsibility' seems, according to international instruments and the discussions which led to them, to involve more than just the issuance of travel documents. Indeed, it appears to encompass protection in a much fuller sense. However, as shown in Part 2, some Member States, in particular Denmark and Austria, do not in practice acknowledge the obligation, under the terms of this 'responsibility', to protect the refugee, even if they accept to issue a travel document. The question of whether transfer involves accepting responsibility for the protection of the individual as a refugee is therefore left somewhat open in this Part of the report, although the discussion above has demonstrated the difficulties of the Danish and Austrian position.

Scenarios C, D, E and F relate rather more to the first question set out in the Introduction to this report, (ie the *proactive* granting of a right) namely:

If a person is granted refugee status in one Member State, should that confer on them, in an integrating European Union, the right to reside, work, and draw social security benefits etc in all of the Member States? And if so, what implications would this have for the protection of their personal data? If their status was to be recognized across the EU, strict regulations would be needed to outline when and what kind of files should be transferred. Should they be able to travel freely between the Member States for the purpose of residence?

The terms of reference for this study imply that the question of whether refugees, like other long-term residents of the European Union Member States, should acquire rights to move, reside and take up employment legally and freely in the entire EU territory is of primary interest. As such the latter four scenarios are likely to be of most concern. Nonetheless, scenarios A and B should also be reflected upon in the light of existing legal obligations. Furthermore, the *proactive* scenarios could potentially be formulated in such a way that they would not include some refugees (eg in the first years after their status had been determined). In that case, it would be important again to reflect on the way in which a refugee should be treated, under existing legal obligations, in a situation in which they do lawfully move to a second state. In other words, an entitlement or simply an opportunity for mobility could be granted, and even then, Member States would still need to react to refugees who move lawfully outside the criteria of that mobility – or indeed to transfer protection within the criteria of that mobility agreement if it would not include provisions to meet the basic requirements of the 1951 Convention and/or the European Agreement.

A. Asylum seekers again in the second state

This scenario is, in principle, not a realistic one, however, we should consider the full spectrum of theoretical possibilities.

It might be thought that, a refugee or person with subsidiary protection, arriving from a first Member State where they enjoyed this protection, could be treated simply as an asylum seeker in the second Member State. Indeed, the European Commission's evaluation of the working of the Dublin Convention demonstrated that in some instances, people whose asylum request has been granted in one Member State do request asylum in a second Member State in which they would rather reside:⁷⁸

...the provisions of the Convention are regarded as inapplicable to an alien who makes an application for asylum in a Member State when the status of refugee has already been granted him in another Member State. This situation, which occurs in practice but whose frequency is impossible to measure (see the provisions of the EURODAC Regulation on the "blocking" of the fingerprints of recognised refugees, for (provisionally) statistical purposes), could possibly be settled by other means. This is, however, a matter of interpretation, about which the Member States are not unanimous

The Regulation replacing the Dublin Convention has not explicitly dealt with the fact of people who are granted refugee status in one Member State making a repeat application in a second Member State. It could be presumed, therefore, that this situation would still occur. If so, it might be the case that the second Member State deals with the case as one of transfer of responsibility, and does not re-open the asylum claim itself. This is not

⁷⁸ COMMISSION OF THE EUROPEAN COMMUNITIES, Commission staff working paper, **Evaluation of the Dublin Convention**, Brussels, 13.06.2001 SEC(2001)756, Page 13

made clear in the Commission Evaluation, and has not been made totally clear through our interviews and questionnaires. What is clear is that the Procedures Directive, agreed on April 28, 2004 does include (at Article 25 paragraph 2 A) a clause saying that.⁷⁹

ARTICLE 25

2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:

(a) another Member State has granted refugee status;

This means that the agreed legal basis to minimum standards for procedures in the European Union would exclude the possibility of considering a refugee who moves to be an asylum seeker again in a second state. However, potentially someone with subsidiary protection in one state could apply again for asylum in a second Member State.

Not only would a second asylum claim be contrary to the Procedures Directive for someone with refugee status from one state. As we have seen in Parts 1 and 2 of this report, this option (of re-opening the asylum claim in the second state, so that the refugee is an asylum seeker once more) should, in fact, be entirely theoretical – and in principle contrary to existing legal arrangements when viewed against the background of international law, and in particular the 1951 Convention. This situation does not appear to have been directly dealt with in the Qualification Directive.

Unless the refugee claims a well-founded fear of persecution or an absence of safety in the first Member State, there would seem to be no conceivable need for her to claim asylum or protection in the second Member State. As established in the 1951 Convention, she has been determined to be a refugee, in need of international protection, and that determination need happen in only one Contracting State. It could be argued that the ability for one determination of status to be sufficient to define a person's situation as that of a refugee was the very purpose for the discussions and conclusion of the Convention as an inter-state instrument.

If the refugee would not be *lawfully residing* in the second Member State, he could generally speaking, if there is no risk of *refoulement* be returned to, or readmitted to the first Member State, unless there would be grounds, under national law and/or practice, for granting legal residence in the second state. In any case, so long as there is no risk of *refoulement* or of persecution or an absence of protection in the first Member State, the refugee would have no need to become an asylum seeker in the second Member State.

⁷⁹ Council of the European Union, **OUTCOME OF PROCEEDINGS** of Council (Justice and Home Affairs) on 29 April 2004 (No. prev.doc.: 8415/1/04 REV 1 ASILE 30; No. Cion prop.: 10279/02 ASILE 33 + REV 1 (de, en, fr) - COM(2002) 326 final/2 Subject: **Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status**, Brussels, 30 April 2004, version ASILE 33. This amended directive is to be returned to the European Parliament.

A.1 Reflections on subsidiary protection

As to persons with subsidiary protection, there are, as indicated above, no existing legal obligations on states to transfer their protection when they take up lawful residence in a second state. They could, in theory, apply for asylum or protection in the second Member State. Such a situation was described in the Commission's Evaluation of the Dublin Convention, in terms of an asylum seeker theoretically changing their application in the first state, so that it was for subsidiary protection and not refugee status (where states operate separated systems) and then applying for refugee status in a second state.⁸⁰ However, if their history is known, as it should be in the course of procedures, the second Member State might consider that protection has been found elsewhere, even if, as the Dublin Evaluation indicated, the Convention would not have applied to such people. In any case, if this has happened it seems to have been in small numbers.

The situation with regard to subsidiary protection does, however, leave one question open for discussion in this study and in the thinking about future scenarios. If transfer of protection for reactive reasons (ie after lawful residence has been taken up for the required period in the second state) is only open to those recognised as Convention refugees, this means that people with subsidiary protection do not have access to a general procedure for transferring their protection even if they would have taken up lawful residence in a second state. Their only option would, in fact, seem to be to apply for asylum in the second state.

From the proactive standpoint, of granting refugees (or protected persons if this were to include people with subsidiary protection) a right or entitlement to move within the Union, another problem could arise. If persons with subsidiary protection, who might reside in the EU for many years, are denied both LTR and access to any agreement on movement for refugees, then they, unlike other long-term residents of an EU Member State at that point, would have to remain in the state in which their protection was granted, at least until such a time as they might be eligible for naturalization, as illustrated in the hypothetical situation sketched below.

Consider a situation in which, as a result of the Dublin regulation, a person who tried to seek asylum in one Member State is transferred for asylum processing purposes to another (this could be the person referred to in the second fictitious case on the opening page of this report). He has no family tie to the second Member State where he had initially tried or wanted to seek asylum, and no visa or prior residence there – and his plane journey took him through a first Member State, where he had stopped for a few days. The second Member State transferred him to the first for asylum application processing. His case showed a need for protection, but not on Convention grounds. Having been granted subsidiary protection status, he desperately wants to go to the Member State where he first sought to apply for asylum: he speaks the language, and has qualifications that might be recognized or convertible there, which they are not in Member State where he was granted status. He is not happy with his life, and cannot (or

⁸⁰ *Ibid.*, page 12

does not want to) integrate in the first Member State. The second Member State will not transfer his protection status because he is not a Convention refugee. When he tried to ask for protection there, after being granted protection in the first State, the authorities of the second State refused to consider an asylum application because he was surely safe, and anyway, his past Dublin transfer was known. His only option is to wait until he can naturalize in the first Member State, and then, as a national and EU citizen, move immediately to the second Member State to start his life anew.

This scenario is hypothetical – but it raises questions about what Member States would prefer to achieve within the context of the Common European Asylum System, and their decisions on qualifications for Convention status and subsidiary protection.

In any case, a second asylum claim in the state in which a person takes up lawful residence (or prefers to be) does not seem to be a workable or efficient scenario.

A.2 Administrative implications and data issues

In particular the situation for those with subsidiary protection needs further consideration in relation to the ‘Dublin Regulation’. As those recognized with refugee status in one Member State are excluded from procedures for asylum in other Member States under the Procedures Directive, they cannot be asylum seekers again in the second State. This means that if they have moved to and reside lawfully in the second Member State, transfer of responsibility, as set out in existing legal obligations is the only option. That requires little administrative change, as it is simply the current situation. For those with subsidiary protection, the administrative efficiency of people applying for asylum in the second Member State is questionable, especially if their movement to that second state and residence there is lawful. Thus, some form of agreement to regulate this situation, in the limited numbers in which it arises, would seem to be necessary. Such an agreement on subsidiary protection might involve the transfer of files relating to the initial claim and procedures, as well as any Dublin movement, within the limitations set by existing arrangements for data transfer. These include the individual’s consent and knowledge of the use to which the data would be put.

B. Refugees without new procedures (as set out in the 1951 Convention)

The Second option would be to maintain the status quo – meaning that refugees, determined to be such in one Contracting State to the 1951 Convention can have their protection and travel document issuance transferred to a second state. This can happen if they take up lawful residence in the second Contracting State, and could happen at a moment which is determined to be appropriate through bi-lateral or multi-lateral agreements such as the Council of Europe Agreement on the transfer of responsibility for refugees, or with reference to the obligations of states under the 1951 Convention.

For those with subsidiary protection, such transfer is, as explained above, not possible. Again, Member States will need to decide how this fits within their conception of the Common European Asylum System.

B.1 Refugee rights

Before proceeding to the more *proactive* scenarios, it is useful to stop and consider the rights a refugee has. This is useful because if we are to consider whether refugees could be treated as long-term resident third country nationals or equivalent to citizens of Member States, we need to know what the differences in rights, entitlements and duties would be. According to the 1951 Convention, refugees have the rights set out in the table below. This tabular format corresponds to later tables for the purposes of comparison. The comments include reference to the Qualification directive. The rights of refugees according to the Convention are set out more fully and with complete information on the category of rights and comparisons to nationals and other non-nationals in the Appendix, as referred to in Part 1 above.

Table 7: Full situation as set out in the 1951 Convention relating to the Status of Refugees.

Category	Position	Comments
Travel document	Contracting States issue travel documents to refugees lawfully residing in their territory. Are valid for one or two years.	Article 28 (Corresponds to Article 25 of the Qualification Directive ⁸¹)
Residence permit/status in the second state	Lawful residence required prior issuance of new or renewed travel document – could be for any reason, and with whatever national conditions pertain to various categories of lawful residence status.	Member States give residence permits to refugees determined to have refugee status under their own jurisdictions. These must be valid for at least three years. (Article 24)
Employment	As for third country nationals. Restrictive measures designed to protect labour market of Contracting State do not apply. Contracting State should give sympathetic	Article 17. (Corresponds to Article 26 of the Qualification Directive. This latter says in para 1 that only rules applicable to the profession and to the public service might restrict activities.)

⁸¹ Council of the European Union, **Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted**, Asile 23, 8043/04 Brussels, 27 April 2004.

	consideration to trying to treat refugees as nationals with regard to wage-earning employment.	
Study	Primary education as for nationals. Access to education other than primary will be not worse than treatment accorded to third country nationals in same circumstance.	Article 22 (Corresponds to Article 27 of the Qualification Directive)
Freedom of Movement	Same as aliens generally in the same circumstance.	Article 26 (Corresponds to Article 32 of the Qualification Directive)
Freedom of Association	The most favourable treatment accorded to nationals of a foreign country.	Article 15 (Not addressed in the Qualification Directive)
Housing	As for third country nationals. Encouraged to be more sympathetic within limits of the law.	Article 21 (Corresponds to Article 31 on Accommodation in the Qualification Directive)
Public goods		
Social assistance/ Public Relief/ Social Security	As for nationals (in specific areas only, with regard to social security)	Article 23, 24 (Corresponds to Article 28 of the Qualification Directive)
Transfer of residence status from one member state to another	Schedule indicates that refugees who lawfully take up residence in another Contracting State should be issued a new travel document in that State when necessary – but this does not imply any right to transfer residence status at all.	(Not addressed in the Qualification Directive.)
Family Reunification	Unity of the family to be maintained	Recommendation B (Article 23 of the Qualification Directive)
Access to Court System	Same access as nationals of country of residence with regard to treatment. Refugees have free access to court systems on the territory of all Contracting States.	Article 16 (Not addressed in the Qualification Directive)

Some Member States and some non-EU Member States use the Council of Europe Agreement, as described above, across Europe, to put the implications of Article 28 and the Schedule into effect. It brings the following ‘modifications’ to the situation regarding transfer specifically, as seen through the 1951 Convention alone:

Table 8: 1951 Convention and Council of Europe Agreement

Category	Refugees: 1951 Convention	Council of Europe Agreement
Travel document	Contracting States issue travel documents to refugees lawfully residing in their territory. Are valid for one or two years.	Until responsibility is transferred, extension and renewal is the responsibility of the first State. Diplomatic missions and consular authorities may handle this.
Residence permit/status in the second state	Lawful residence required prior issuance of new or renewed travel document – could be for any reason, and with whatever national conditions pertain to various categories of lawful residence status.	Lawful residence required
Transfer of residence status from one member state to another	Schedule indicates that refugees who lawfully take up residence in another Contracting State should be issued a new travel document in that State when necessary – but this does not imply any right to transfer residence status at all.	‘Responsibility’ (for the issuance of travel documents) is considered transferred after two years of continuous residence in the second State, or earlier if the second State has allowed the refugee to stay permanently or for a period that will outlast the validity of the travel document. ‘Responsibility’ also transferred if refugee can no longer be readmitted to the first country. Second State shall inform the first State when it assumes responsibility. These are mechanisms, however, and not rights as such.
Employment	As for third country nationals. Restrictive measures designed to protect labour market of Contracting State do not apply. Contracting State should give sympathetic consideration to trying to treat refugees as nationals with regard to wage-	Stays for purpose of training do not count toward the two years required residency for transfer of responsibility to take place.

	earning employment.	
Study	Primary education as for nationals. Access to education other than primary will be not worse than treatment accorded to third country nationals in same circumstance.	Stays in second country solely for studies do not count toward the two years required residency for transfer of responsibility to take place. Article 2.2.a
Family Reunification	Unity of the family to be maintained	After date of transfer of responsibility, the second State takes on responsibility for admitting family (spec. spouse and minor/dependent children). Article 6.

B.2 Administrative implication and data issues

From an administrative and cooperative perspective, one question which arises is whether or not some form of data storage, and the transfer of case information, would be necessary between EU Member States.

Clearly, neither the Contracting States to the 1951 Convention, nor those that apply the European Agreement, currently operate a data storage or transfer of data system. As part of a European Union System, however, such data might be thought useful, especially if it was thought that a lot of people with refugee status might try to move from one Member State to another, and request a transfer of responsibility.

At present, data is collected from asylum seekers for use in the Eurodac system. This system is used to put the Dublin Regulation into effect by allowing Member State authorities to enter data and shortly thereafter hear whether or not the individual has already applied for asylum elsewhere in the participating states. This data is deleted either when the person leaves the territory, or after several months. The data entered into the Eurodac system included fingerprints, the name of the member state in which the first application was filed; the place and date of that application; the sex of the applicant and a reference number. In theory at least, a transfer system for refugees could put a data system into good effect. However, as explained in Parts 1 and 2, Member States, like all Contracting States to the 1951 Convention *should* recognise the status of a refugee, whichever Contracting State determined that status initially. Member States have generally resisted the notion of ‘mutual recognition’ in the asylum area. Our analysis would suggest that mutual recognition in fact exists *de facto* as a result of international obligations. Ultimately, a common procedure and common asylum system in general would only reinforce the notion that a refugee in one state is to be considered a refugee by all.

As such, Member States should not have any need to exchange data about any individual refugee’s case: rather the possession of a Convention Travel Document should be

sufficient to indicate that status has been granted.⁸² Generally speaking, if it would be felt that data would need to be exchanged, the refugees' consent would be necessary; and their interests would need to be protected.⁸³

C. Including or Treating Refugees as Long-term resident third country nationals

In 2001, the European Commission proposed a directive on long-term residence status for third country nationals.⁸⁴ This proposal explicitly *included* refugees with Convention status. By the time the directive was agreed upon in November 2003, refugees had been explicitly *excluded*.⁸⁵ This exclusion gave rapid rise to discussions about the need to address the issue of the ways in which, and circumstances under which refugees recognised as such in the Union's Area of Freedom, Security and Justice, with its Common European Asylum System, could enjoy the freedom of movement that other legally resident, long-term third country nationals can.

The initial proposal for a directive on long-term residence status, with rights to free movement for residence and employment, emanated from the Tampere Conclusions. Specifically, grounds for such a proposal are found in paragraphs 18 and 21:

18. The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.
21. The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near

⁸² The one situation we have come across in which this is not the case is that of the Netherlands, which apparently gives a Convention Travel Document to all people granted protection within its one-status system, regardless of the reason for determining that protection is needed. The reasons include the Convention definition, but also other humanitarian grounds. This means that someone whose protected status was granted in the Netherlands for non-Convention reasons could receive a Convention Travel Document and then go to live lawfully in another Member State for some accepted reasons. That person could then request transfer of responsibility, and be issued with a new Convention Travel Document in a state in which they might not (or most likely would not, if all Member States will be consistent in applying the Qualification and Procedures directives once they enter into force at some future date) in fact have been granted Convention status if they had had to submit an asylum application.

⁸³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

⁸⁴ Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents COM/2001/0127 final - CNS 2001/0074 *Official Journal C 240 E*, 28/08/2001 P. 0079 - 0087

⁸⁵ Council Directive of 25.11.2003 concerning the status of third country nationals who are long-term residents (2003/109/EC, published in OJ L 16 of 23.1.2004).

as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis--vis the citizens of the State of residence. The European Council endorses the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.

Having been excluded from actually enjoying long-term residence status at present, there would seem to be three ways of re-connecting refugees to a situation which would mirror that of other long-term resident third country nationals.

1. The directive could be re-opened to include refugees.
2. Refugees could be granted a long-term resident status or similar status under another directive. This could for example be in the context of an amended Qualification Directive or a new directive.
3. Refugees could be treated in the same way as long-term resident third country nationals (as the treatment they receive is among the most favourable treatment accorded to non-nationals within Member States – that of EU citizens being more favourable on some grounds), even if they are not granted long-term residence status as such.

Responses to our interviews and questionnaires have demonstrated little political will to include refugees directly among those eligible for long-term residence status, and only limited will to extend some form of right or entitlement to movement to refugees. Specifically on the extension of LTR status, there seems also to be widespread feeling that refugees could either not meet the criteria established for the status (ie five years residence; a certain income level or resources; health insurance) or that the criteria should be modified to eg shorten or lengthen the period of residence required etc.

In the discussions on granting refugees long-term residence status, suggestions have been made about how the individuals could become long-term residents *instead* of being refugees. This would clearly pose severe difficulties, and UNHCR would almost certainly oppose it as contrary to the 1951 Convention. It is therefore not a viable option.

An amendment to the Qualification directive to include access to EU-wide mobility for residence and employment purposes for refugees (and persons with subsidiary protection) would specifically engage and uphold the refugee or protection status, and should include clauses relating to transfer. These should most likely not undermine the current position in the European Agreement, and include all Member States (except where opt outs apply). A new directive specifically on mobility for refugees (and protected persons) and transfer of their protection should likewise directly link the need to uphold protection and ensure that the status remains intact.

The final option listed above would be treating the refugees in the same way as long-term residents, without actually according them that status – rather making it either a component of the rights of refugees in the European Union, or creating an long-term

resident refugee accompaniment to refugee status. Effectively, this could not be by way of some unwritten guarantees, and so the net result of this option would be inclusion of mobility and transfer in a protection related directive as set out above.

One major question is: What requirements might be laid on refugees to have them become, obtain the status of, or be treated as long-term resident third country nationals as set out in the Directive on this subject? A second key question is: If LTR or some similar status would be extended to refugees, should those with subsidiary protection also be eligible or benefit from this status?

The major reason for which the Directive on Long-Term Resident Third Country Nationals does not explicitly cover refugees is that Member States feared the consequences in terms of the protection status of the refugees who would move. As has been shown in this report, that fear was probably not necessary for two reasons. Firstly, the number of refugees seeming to want to move between Member States is relatively limited. Secondly, some refugees do move – and when they have moved lawfully, and make the correct applications, most Member States will, in line with their existing international obligations, transfer responsibility (either for issuing travel documents or for full protection) and this does not appear to have given rise to difficulties to date.

Treating refugees on an equal footing with third country nationals when it comes to obtaining a status comparable to LTR would, nonetheless, raise problems which some Member States have recognized, in terms of conditions. The normal criteria for the granting of LTR status, which gives rights to move to seek employment, for example, in a second Member State, are five years of legal residence, plus stable and sufficient resources and sickness insurance. Refugees might, as a result of some of the disadvantages they have faced, find it more difficult to fulfil the latter two criteria. There could, therefore, be more favourable criteria for a status similar to LTR for refugees. More favourable treatment could apply, for example, to the length of residence or the income level needs. Although it is clear that the playing field may not be level for refugees when they first arrive, easing the requirements for them to become Long-Term Resident Third Country Nationals may be seen as discriminatory towards other immigrants or even discriminatory towards the refugee by assuming that he or she would not be able to fulfil the regular requirements. Such favourable treatment might, however, be a reason for some Member States to feel that freedom of movement and residence for refugees is undesirable – especially where the income criterion is concerned. Member States would certainly not want to grant ‘welfare-state shopping’ rights to refugees.

In any case, under this scenario, it must be borne in mind that even if refugees would be considered to be long-term resident third country nationals:

1. They would be able to take up lawful residence in another Member State before the LTR status was achieved, in the same way and under the same circumstances as particular individuals can today. Having taken up lawful residence in a second Member State, refugees could request a transfer of

protection through the request for Travel Document renewal and, if they met the criteria with which states operate as set out in Part 2 of this report, they could be granted that transfer.

2. Even if they were granted a status or treatment equivalent to long-term residence, with the associated movement rights, refugees would have to ask the 2nd Member State for a new travel document at some point, as their travel document on arrival would be issued by the 1st Member State, and could have a limited validity dependent on the state. The only way to avoid this would be to maintain responsibility for the issuance of the travel document and ultimate protection with the 1st Member State (ie the one which granted status) rather than transferring that to the Member State in which the refugee would reside.

So, simply considering a refugee to be equivalent to an LTR could confer the right to move and reside in different EU countries, but would most likely mean that a transfer of protection status, as represented by issuance of the travel document, would still be required. The only situation in which this would not be the case would be if the Member States agreed on a construction that maintained responsibility and protection in the state that determined status. Such a construction would require a set of guarantees and arrangements, including administrative exchanges of detailed data and information, to be in place. Those arrangements would need to be carefully considered by bodies such as UNHCR as well as Member States, to ensure that refugees would consistently and genuinely be protected in every sense of the word and in every sense of the existing legal obligations. Such an arrangement might be considered an alternative modification to the standards of Article 28 of the 1951 Convention and the Schedule, instead of the Council of Europe's European Agreement, which, as detailed in Parts 1 and 2, added the two years' lawful residence clause.

Considering a refugee as a third country national who can have long-term residence status if they fulfil the three conditions of 5 years' residence, health insurance, and stable and regular income, or as equivalent in status but with different criteria and a different label, could result in a mechanism which would respond to the first question set out in the Introduction – namely:

If a person is granted refugee status in one Member State, does that confer on them, in an integrating European Union, the right to reside, work, draw social security benefits etc in all of the Member States? Can they travel freely between the Member States for the purpose of residence?

However, the situation as set out in Article 28 and the Schedule of the 1951 Convention and supplemented by the Executive Committee Notes and Conclusions and the Council of Europe Agreement would still provide the basis for the transfer of protection for those refugees who have lawfully taken up residence in another state.

The fact of having been granted long-term residence status in addition to refugee status is not sufficient to respond fully to these obligations. As the travel document for a refugee is issued by the State that determines the refugee's status, in the first instance, and to be renewed or reissued by a State of lawful residence if the refugee moves, the fact of being a refugee marks a key difference with other Third Country Nationals, unless these legal obligations were to be modified under a special arrangement.

Our research with refugees who hope to, plan to or have made a move would indicate that those people whose status is involved in such a transfer currently feel they have little or no awareness of their potential for movement and transfer. They frequently feel insecure even though they have been determined to be refugees – because the last thing they want to do is to create a situation in which they lose that protection status. Any modification in this area would need to be very well communicated to those involved.

The most important element would be to ensure protection against expulsion. If a Long-Term Resident Third Country National status or something similar were to be granted to refugees, it would need to be made very clear to everyone that they retained that protection. There would also need to be very explicit clarity on which state was responsible for both ensuring protection against expulsion or *refoulement* and for taking back the individual, still with refugee status, should the state of residence come to the conclusion that the person must leave its territory.

C.1 The question of efficiency in relation to the Dublin Convention

If refugees were to be considered as equivalent to Third Country Nationals who obtained LTR status, or indeed in any way granted a status which permitted them, under certain conditions, mobility across the Union for residence, employment and other purposes, there would, from an efficiency perspective, be a need to consider the results of the combination of this system with the Dublin Regulation. There could potentially be situations in which the following type chain of events would occur:

- Mr J. passes through Germany on his way to the UK to seek asylum. His details are entered in Eurodac.
- Nonetheless, he continues his journey to the UK and requests asylum.
- The UK makes a Dublin claim on Germany.
- Mr J is transferred, after several months, to Germany.
- Mr J's case is processed in Germany, and after 18 months, he is granted asylum.
- Mr J cannot speak German, is demotivated, wants to be in the UK where he has friends, cannot find work and is generally unhappy – even though he is now safe.
- Three years later, Mr J's friend in the UK identifies a job opening for someone with quite unique qualifications, which Mr J has. Mr J applies for the job, gets it, and is fortunate enough to be granted the papers to enter and live lawfully in the UK.

- Two years later Mr J's Convention Travel Document is about to expire, he applies for a new one in the UK, and responsibility for him is transferred.

In this scenario, as a result of the combination of measures to first determine the state responsible for dealing with an asylum application, and later to permit refugee mobility, some seven years after he applied for protection in the UK, Mr J is, in fact, accepted as a refugee in that country.

In the meantime, both the British and German authorities (or any other Member States – all of them could be involved in such a scenario) have spent a lot of money of investigating aspects of his case, both to determine status and to determine which of them should have responsibility for his case. They would also have incurred potentially significant social security related expenses, prior to his finding work in the UK. If he would not have found the job, he might have waited until he could naturalise as a German citizen and then moved to the UK anyway with his EU citizenship right to mobility. The Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a Third Country National does include an article under which 'cultural considerations' can be taken into account as part of the 'Humanitarian Clause'.⁸⁶ The scenario sketched out above might not become an issue if that clause would indeed be employed in cases in which no other criteria in the Regulation's hierarchy apply. We note this connection to the Regulation simply to highlight that while the Regulation determines the State responsible for *examining* an asylum application, it does not necessarily determine the State in which the refugee, once recognized, will remain. If a mobility mechanism would be developed, this would imply that the use of the criteria determining responsibility for examining a claim could usefully be dealt with in correspondence to the asylum seeker's evident will to reside in a particular Member State, if such a will is indeed evident and relates to, for example, the Humanitarian Clause, if not to other criteria. In any case, a person recognised as a refugee will be able to apply for a transfer of protection if he gains lawful residence in his preferred Member State at some point following the examination of his asylum application.

In summary, the situation for third country nationals generally in tabular form would be as follows. This is useful for comparison with the situation for other groups, which will be presented below.

⁸⁶ Council of the European Union, Regulation (EC) No 343/2003 of 18 February 2003 **establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application** lodged in one of the Member States by a Third Country National, published in the Official Journal L50 25.2.2003 pp.1-10

Table 9: Full situation for Third Country Nationals as set out in the Directive on Long-term Residence Status for Third Country Nationals.

Category	Position	Comments
Travel document	From country of origin/citizenship	
Residence permit/status in the second state	As an extension to the status in the 1st Member State. After 5 years or lawful residence and with demonstration of health insurance and sufficient funds, a long-term residence permit is issued which confers the right to freedom of movement for residence and employment in all EU Member States	LTR Directive Article 8
Employment	As for nationals except in special categories	LTR Directive Article 11(1a)
Study	As for nationals	LTR Directive Article 11(1b)
Freedom of Movement	As for nationals	LTR Directive Article 11(1h)
Freedom of Association	As for nationals	LTR Directive Article 11(1g)
Housing	As for nationals	LTR Directive Article 11 (1f)
Public goods	As for nationals	LTR Directive Article 11 (1f)
Social assistance	As for nationals	May be limited to core benefits LTR Directive Article 11(4)
Family unity	To be preserved	Whereas, para. 20
Transfer of residence status from one member state to another	Must apply within 3 months Must show sickness insurance and sufficient funds as well as residence permit as LTR from 1 st Member State	Same as for EU citizens until March 2004 LTR Directive Article 15
Access to Court system		

D. Treating refugees in the same way as EU nationals even if they do not have citizenship of a Member State is similar to the directive on free movement for EU citizens.

Just as refugees could potentially be treated in a similar way to long-term resident third country nationals as defined and described in the November 2003 directive, it should also be possible to devise a mechanism whereby refugees would have similar free movement rights to citizens of the European Union even if they have not naturalized in a Member State.

One reason for creating such a mechanism might be the fact that their travel document is issued by a Member State – which makes the situation of refugees unlike that of third country nationals and, in some senses, more like that of citizens. Such a position could also, theoretically, be based on the fact that according to the 1951 Convention, refugees have the same right to freedom of movement domestically as nationals of the state in which they are determined to be a refugee. So, since nationals of EU Member States have a right now to freedom of movement and residence in the EU as a whole, it could be argued that refugees should have the same right.

One question in this scenario would be whether the refugee's travel document should continue to be issued by the 1st Member State – in other words, regardless of where the refugee is residing in the EU, the Member State responsible for their travel document and protection is the one that determined their status. But that would seem to be at odds with the 1951 Convention's assertion in Paragraph 16 of the Schedule that "The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on the diplomatic or consular authorities a right of protection." It would also be at odds with the Council of Europe Agreement as well as Article 28 of the 1951 Convention. On the other hand, as noted above, if guarantees of protection were in place, one could ask whether, within the EU as a whole, it would be problematic for protection to be the responsibility of the Member State which determined status rather than the Member State in which a refugee resides, for those limited number of people who move.

Such a mechanism might also administratively link to the Dublin Regulation in that once it was determined that an asylum seeker's case should be processed in a particular Member State, that Member State would also be responsible for the people whose cases are determined to merit refugee status. Such a situation might be problematic from the point of view of the Convention and European Agreement perspectives. One way of resolving that difficulty might be to see the basic principle of permitting movement as a proactive measure to involve responsibility remaining with the first Member State. If, however, the refugee would apply for transfer after living lawfully in the second Member State for the requisite period, such a transfer (in a reactive sense as we have sketched it in this report) could take place.

One potential barrier to this scenario could arise if the rights and entitlements of the individual refugee, or expression of those rights and entitlements would vary from one

Member State to another. For example, the Qualification directive at Article 29 says that Member States “shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.” If the refugee is granted status in a Member State which offers, for example, free dental care as part of a national health system, but moves to a Member State which does not offer free dental care, but makes minimum charges, but the status of the refugee remains the responsibility of the first Member State – what should actually be the refugee’s entitlement? Obviously, this type of issue could arise in many different ways, and this is just one theoretical example. However, situations could arise in which issues of solidarity and non-discrimination claims would be brought to the table. Thus, a measure to proactively allow movement in this way would need careful consideration in a legislative instrument.

In any case, like EU citizens, refugees who could under this suggested scenario be treated as if they were equivalent to those citizens, would also be subject to the same conditions and obligations as EU citizens. These include not burdening the social security system, for example, and a limited period of residence as a job seeker.

A mechanism treating refugees as if they have EU citizenship could also speed up the process which some refugees appear to use anyway – ie of waiting until they can naturalise in the first Member State either to move at all, or to let it be known that they have moved. This waiting for naturalization, which for refugees wishing to move might be more about gaining EU citizenship than about gaining the citizenship of an individual Member State, could be avoided if refugee status somehow conveyed at least the freedom of movement, residence and employment qualities of EU citizenship.

For purposes of comparison it is useful to note the level of rights that EU citizens have when they move between Member States.

Table 10: Movement for residence purposes in the EU for EU citizens.⁸⁷

Category	Position	Comments
Travel document	From country of origin/citizenship – to be re-issued by the authorities of the Member State of nationality.	Citizenship of one Member State gives also EU citizenship, including freedom of movement and right to reside in other member states. Emergency travel documents can be produced by another EU state than

⁸⁷ Council of European Union “**Common Position adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EC, 72/194/EC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC and 93/96/EEC.** Brussels, 11 November 2003, Interinstitutional File: 2001/0111 (COD) 13263/03

		that of citizenship if necessary
Residence permit/status in 2 nd Member State	None required for first three months. Can be required after 3 months. After the 3 month point, people who are employed or self-employed in the Member State must be permitted to reside there. Also, if they have resources to provide for the family, regardless of employment status, so long as they are not a burden on the social-security system, they may stay.	Residency made unconditionally 'permanent' after 5 years.
Employment	Equal rights and access as nationals	
Study	Equal rights and access as nationals	
Freedom of Movement	Equal rights and access as nationals	
Freedom of Association	Equal rights and access as nationals	
Housing		Presumably falls within social assistance where public housing is concerned
Public goods		
Social assistance	Must not become an 'unreasonable burden' during initial residence, so residing in a 2 nd member state for more than 3 months may be subject to conditions.	
Transfer of residence status from one member state to another	May need to apply after 3 months. Permanent residence after 5 years of residence.	
Family Unity	Family members have right to move with the EU citizen, regardless of nationality	Family members who are not EU citizens but have a residence card should be exempted from visa requirements if such exist for the country of their

		nationality (Preamble 8)
Access to Court system		

The following table sets out the three manners of dealing with refugees' potential movement for residence purposes set out thus far. The key difference seems to lie in the question of the issuing authorities for the travel document.

Table 11: Treatment of refugees as they must be treated under the 1951 Convention, treatment of long-term resident third country nationals and of EU citizens

Category	Refugees: 1951 Convention	Long-term resident third country nationals	EU citizens
Travel document	Contracting States issue travel documents to refugees lawfully residing in their territory. Are valid for one or two years.	From country of origin/citizenship	From country of origin/citizenship – to be re-issued by the authorities of the Member State of nationality.
Residence permit/status in the second state	Lawful residence required prior issuance of new or renewed travel document – could be for any reason, and with whatever national conditions pertain to various categories of lawful residence status.	From First Member State, after 5 years and with demonstration of health insurance and sufficient funds a residence permit is issued which confers the right to freedom of movement for residence in all EU Member States	None required for first three months. Can be required after 3 months. After the 3 month point, people who are employed or self-employed in the Member State must be permitted to reside there. Also, if they have resources to provide for the family, regardless of employment status, so long as they are not a burden on the social-security system, they may stay.
Transfer of residence status from one member state to another	Schedule indicates that refugees who lawfully take up residence in another Contracting State should be issued a new travel document in that State when necessary – but this does not imply any right to transfer residence status at all.	Must apply within 3 months Must show sickness insurance and sufficient funds as well as residence permit as LTR from 1 st Member State. May get a new Long-term Residence status from the 2 nd Member State after 5 years.	May need to apply after 3 months. Permanent residence after 5 years of residence.
Employment	As for third country nationals. Restrictive measures designed to protect labour market of Contracting State do not apply. Contracting State should give	As for nationals except in special categories	Equal rights and access as nationals

	sympathetic consideration to trying to treat refugees as nationals with regard to wage-earning employment.		
Social assistance/ Social Security	As for nationals	As for nationals	Must not become an ‘unreasonable burden’ during initial residence, so residing in a 2 nd member state for more than 3 months may be subject to conditions.
Study	Primary education as for nationals. Access to education other than primary will be not worse than treatment accorded to third country nationals in same circumstance.	As for nationals	Equal rights and access as nationals
Freedom of Movement	Same as aliens generally in the same circumstance.	As for nationals	Equal rights and access as nationals
Freedom of Association	The most favourable treatment accorded to nationals of a foreign country.	As for nationals	Equal rights and access as nationals
Housing	As for third country nationals. Encouraged to be more sympathetic within limits of the law.	As for nationals	
Public goods		As for nationals	
Family Reunification	Unity of the family to be maintained	Unity to be preserved	Family members have right to move with the EU citizen, regardless of nationality
Access to Court System	Same access as nationals of country of residence.		

E. Treating refugees differently according to why they move

Article 28 of the 1951 Convention, and its Schedule mean that all refugees, recognised by the authorities of a contracting state, have to be able to have responsibility for them transferred to a second state if they go to live there lawfully. The question to be raised in this section considering a granting of a proactive right to move around the states that constitute the EU is whether the timing of that transfer could be determined according to the reason for which the person moves. This would be a modification of sorts to the general principle in order, as the European Agreement did, to allow for more effective implementation of a rather unclear element. The question is whether relating the timing of transfer to the reason for movement to take up lawful residence would be discriminatory.

A second way in which this scenario could be considered is as a model not for the transfer of Convention protection, but for the transfer of subsidiary protection between Member States. As there are no rules on the transfer of subsidiary protection as such, this would effectively mean creating rules within the Union, which might not focus on the fact of subsidiary protection (other than its being distinct from Convention status) but rather would focus on the reason for movement and transfer.

If the fact of being a refugee or protected person were deemed not to be the primary defining feature of a person with protection wishing to move between Member States, but rather their reason for movement was made the primary definer, it could be possible to treat the refugee making such a secondary movement according to the reason for which they were making that movement.

In such a situation, the fact that the individual would be taking up employment, for example, as the reason for taking up lawful residence in the second Member State would become the reason for which the second Member State would agree to accept the transfer of the individuals protection. Another reason could be family unity. In fact any of the reasons for which a person, who happens to be a refugee or protected person, could take up lawful residence in a second Member State could become reasons for which that Member State would take on responsibility for their protection.

The phrase ‘who happens to be a refugee or protected person’ is not in anyway intended to undermine the significance of refugee status or subsidiary protection. Rather, the implication here is that on having been determined to be a refugee or in need of protection, the individual becomes just like any other person who lawfully resides in an EU Member State. Only, when it comes to migration, this particular migrant (on the secondary movement) has refugee status or subsidiary protection in an EU Member State. That makes them dependent on that EU Member State for their protection and travel document. It also gives rise to potential confusion in terms of the issuance of residence permits. And it means that either the state in which the person will lawfully reside and the state which granted protection must agree to the transfer of responsibility, or the state which granted refugee status or protection must maintain responsibility for someone no

longer living within its territory and with potentially no connection to it other than the initial grant of refugee or other protected status.

In this scenario, the content of refugee protection would remain that of the 1951 Convention, and of subsidiary protection remain related to the Qualification Directive, but there would be some kind of added EU value through the facilitating of secondary movement, with a linked transfer of protection status where such movement would be lawful due to the reason for which the movement is taking place. Refugees could, of course move to reside lawfully anyway, under existing rules on the taking up of lawful residence in the various Member States. This scenario would mean the adoption of a measure that would modify the 1951 Convention/Council of Europe Agreement in order to ensure all EU Member States would act in the same way, whether or not they have signed and ratified the Council of Europe Agreement. It would also, potentially, mean a relaxing of the specific Council of Europe Agreement rule regarding two years of lawful residence.

F. Creating a system for refugees to move and reside in the whole EU

Two different types of systems could be envisaged in a scenario that created a whole new system for refugees to be allowed to move, reside and work in the whole EU.

- The first system would be one that attached a right to free movement and residence in the entire EU to any refugee status recognised in an EU Member State.
- The second system would be one that would allow mobility to refugees throughout EU, after a period of time during which they had been protected in the first state, and which would allow either a transfer of protection status, or the maintenance of status in one EU Member State while residing in another Member State.

Option 1

The first system for refugees to have mobility in the whole EU then would grant refugees mobility from the earliest days of their status determination by an EU Member State. This could be based on a mutual recognition of refugee status determined by any Member State. This is, currently, effectively the case, since once a person is determined to be a refugee in one Contracting State they are determined to be a refugee for the understanding of all Contracting States to the 1951 Convention.

This recognition of status alone is currently not sufficient for mobility, however, since permission for lawful residence must be granted by the second state. Thus, to create this type of system, EU Member States would need to formally recognize that any determination of refugee status by a Member State was a determination made on behalf of the entire EU. This could be possible, in the long-term, under a common asylum system (and common resettlement programme) however, with the current situation of a Qualification Directive and Procedures Directive which contain only minimum standards,

such mutual recognition through a common approach and therefore full harmonization is not possible. This EU ‘twist’ or addition to the 1951 Convention situation would effectively be that a right to residency anywhere in the EU could be attached to every refugee status determination made in a Member State. This system would bear similarities to that sketched in scenario D above.

The same system could also cover a mutually agreed form of subsidiary protection.

In the case of a future Common European Asylum System, with commonly agreed procedures and definitions, a person granted refugee status could be given a Convention Travel Document for the entire European Union – a sort of European Union Convention Travel Document. There could be a notation as to which Member State had initially granted the refugee status, but no questions about whether or not the person was in fact a refugee anywhere in the Union territory. The only question would be which Member State was ultimately responsible for ensuring non-refoulement in a case in which the Member State in which the individual would be residing would find expulsion from that state to be warranted.

The problem with this type of system, from the Member States’ perspective, would naturally be that as a simple system of determination and freedom of residence, there would be no obvious limitation on access to welfare – nor could there be. Since all residence in the Union would, according to this system, be lawful on the grounds of refugee status determination in any Member State, there would be no associated need for a non-refugee status-related reason for movement and the taking up of lawful residence in a second state. As all Convention refugees would need to be granted equal access to social assistance, benefits and welfare as nationals enjoy, in the whole European Union, there could be no limitations, even of the sort applied to EU citizens residing in a second Member State.

Such a system might even mean the disappearance of a formal mechanism of transfer of protection or responsibility between the EU Member States, since all Member States would collectively have responsibility for every refugee determined to be a refugee within the European Union. As such, the European Agreement would potentially be redundant for EU Member States. Such a system could also remove the notion of a link between protection and residence. However, Member States would certainly need to issue residence permits, and one Member State would need to be responsible for the travel document – and that responsibility, at the time of renewal, might need to shift to the state in which the individual resides.

Option 2

The second system under this scenario of creating a system for refugee mobility would be on which maintains some kind of criteria that meant the refugee would, for a certain period at least, be excluded from certain welfare provisions in the second state. This could not mean exclusion from those provisions mandated by the Convention. But those might be limited to core welfare rights, and not extend to income support or unemployment benefit, for example. In other words, in the first instance, for a period of a

few years, the refugee would have full Convention rights in the state that determined status, but more limited rights (like those of EU citizens or Long-Term Resident Third Country Nationals) in all other Member States. One could call this ‘preferential’ treatment in the status determining state, but in fact it would be normal treatment there, and lesser conditions should the refugee choose to use the access to mobility offered as a result of her status in one state, to reside lawfully in all other EU Member States.

Such a scenario might see criteria not dissimilar from those of Long-Term Resident Third Country Nationals for people who would effectively be Long-Term Resident Refugees (or Protected Persons). Thus, the criteria might involve:

- Residence in the first state for a period of two years (or three years – but less than five years);
- A demonstrable means of support through employment, savings or family network.

In other words, the health insurance requirement that Long-Term Resident Third Country Nationals face would, as we sketch this system, not be a criteria at all. Conditions of mobility might include a limitation on how long the refugee could remain in the second state while looking for employment, if they do not have another firm connection to that second Member State. This would be somewhat similar to the situation for EU citizens. As such, this system might form a fusion of scenarios C and D above, with a set of rights for refugees (and persons with subsidiary protection) which are similar to those of Long-Term Resident Third Country Nationals and/or EU citizens who take up the mobility opportunities presented in the EU Area of Freedom, Security and Justice.

One reason for making the residence period shorter in the first Member State than that for third country nationals to achieve LTR (two or three years – or perhaps even less, instead of five) would be to promote the integration of the refugee *somewhere* in the EU. This promotion of integration into an EU Member State might be accomplished through allowing them to join a family or friendship circle in a specific Member State (with their financial, emotional and practical support). Or it might be accomplished through the refugee being more successful in finding employment in a Member State in which they speak the language, or have some historical affinity. The reduced time period would in a sense compensate the individual for any movement necessitated by the implementation of the Regulation determining the state responsible for processing an asylum application, if, for example, the Humanitarian Clause could have been put into effect, but was not, when none of the hierarchy of criteria applied.

Administrative expenses, medical costs and a variety of other financial burdens on the state determined to be responsible for processing the case might be relieved in this way over the longer-term, as while they might have been responsible for dealing with the asylum claim, they are not the only state which could be responsible for the residence and assistance of the recognised refugee (or person recognised to have a protection need). The time period between status determination and the opening of the opportunity for mobility (suggested as being of two or three years duration during which the refugee or person

with subsidiary protection should be in the first Member State) should be relatively short. This is because the individual's integration potential could be at stake – which is of concern not only to the individual and society, but also to all Member States) and because existing international obligations (the 1951 Convention and European Agreement) to react to a lawful move in those few cases in which it would take place would, of course, anyway apply. Those obligations include a likely two-year time frame for transfer of responsibility *after* lawful residence has been taken up in the second state. The system sketched in this scenario of proactively permitting mobility for refugees should make movement possible at an early stage than the reaction to a lawful move would become possible. This would mean that the drawn out planning for the lawful move described in some of our refugee interviews could be proactively avoided. The question is whether transfer of responsibility as such would, under this system, actually have to take place.

One way to resolve that would be to leave it open to the refugee to apply for transfer of responsibility for issuing travel documents or not, at their own, individual discretion. Some Convention Travel Documents in Europe last for up to ten years: the refugee might be happy to keep that document, and the Member States would need to decide whether or not they can protect a person with refugee protection from their authorities who is living in another Member State. Member States could renew travel documents via consular offices for those refugees who did not seek (or succeed in) a transfer responsibility.

Associated with this potential for options for the refugee as to which state in fact protects him, the opportunity to naturalise either in the state which determined status and provides the travel document, or in the state in which the refugee lawfully resides, could be kept open.

The refugee who has had status in one state for the required period and has resources as required by the criteria would lawfully reside (as long as any other requirements such as registration with local authorities etc were fulfilled) in any Member State. If transfer of responsibility had not been carried out, and the refugee no longer fulfilled the criteria for mobility, she would still be the responsibility of the Member State which had issued her travel document, and should in theory at least return to that state, and if expulsion from the second Member State became an issue, she should be returned to the first (and still protecting) Member State to ensure *non-refoulement*.

Refugees would need to have full and clear information on their status across the Union, and the implications of moving and transferring or not transferring protection, as well as information on how to apply for Long-Term Residence as a Refugee Status. Our interviews with refugees would suggest that it is important to keep in mind that they – by and large – see themselves to be essentially different from other third country nationals. We found many instances where refugees – without prompting – made remarks in that direction. To paraphrase: economic interests may motivate other migrants; these are not what made me/us move. This suggests that a uniform status in its own right and /or equal to that of EU-citizens rather than equal footing with third country nationals would come closest to the refugees' self-image.

2. Between Non-Member States and Member States

The existing scenario between Member States and Non-Member States for the transfer of protection should be that sketched under scenario B above: treating a refugee who has moved and resides lawfully in a second state which is a Contracting Party to the 1951 Convention and who has a travel document issued by the Contracting State which determined their status as a refugee – and issuing a new travel document for that individual when necessary.

However, as has been seen above, such transfers do not always take place as set out in the 1951 Convention and in the Executive Committee Notes and Conclusions – or at least authorities are not certain that transfer would simply be made on the basis of the issue of a travel document, without any verification of status. They are uncertain in some cases (including in non-Member States consulted, such as the US and Canada) because they rarely, if ever, see such cases of requests for transfer. In the case of the US and Canada this is frequently because the individual in question applied for an immigration status, including permanent residence and the possibility of citizenship in a short period of time, and the issue of their refugee status appears not to arise.

Bi-lateral agreements could, of course, be concluded. However, there would need to be strong indications that frequent transfers were requested for this to be necessary. As such, Switzerland and Norway might be the most likely non-Member States with which it could be useful to conclude such agreements from a geographic perspective, although not necessarily from a numeric perspective.

Conclusion

We set out in this study to assess how Member States currently deal with the status of, protection for and responsibility for refugees who move to lawfully reside in a state other than the one that determined their status. We also set out to respond to two questions – one about how Member States can react to refugees who move and how Member States might choose to proactively grant refugees the right to move freely around the EU to live and work, just as other long-term legal residents, including citizens, can.

One of our major conclusions is that the “transfer” only *ends* with symbolic issuance of Travel Document: that is not where it starts. It starts with the refugee taking up lawful residence in the second state – and even before that, it effectively gets under way with the refugee’s attempts to be in the state in which they will ultimately reside. That process might even start before the asylum claim is assessed, and the Dublin Regulation poses the first obstacle.

A second key Conclusion is that at present, the number of refugees lawfully taking up residence in a second state *and* requesting and receiving a transfer of their status symbolised by the issuance of a new travel document in the second state is quite small. However, we cannot know whether many more refugees are moving (lawfully or unlawfully) and/or not requesting transfer even if they move lawfully. We have been quite clear about the reasons for which we think it was quite difficult to find refugees who have transferred to a second Member State. We must conclude from this experience also that, if the European Commission and Member States wish to see research that can help them make policies based on reality, the ways and means should be found to know about the situations of different refugees, and to be able to find them and ask them whether they would agree to be interviewed.

A third key Conclusion is that State parties to the European Agreement generally voiced the opinion that the criteria operated by this instrument are acceptable and that they see the instrument as being very useful. Some find that the Agreement need some elaboration in particular regarding bilateral procedures and access to exchange of information. Access to (subsequent) exchange of information or files was seen as particularly important in order to secure fair decisions in situations where questions of cessation or revocation exceptionally emerge. Generally, however, state parties expressed the opinion that any future regulation amongst the EU Member States should be framed around the 1980 Agreement. They also expressed regret that not all European States have ratified it.

Further conclusions include that:

- All but one of the States covered by this study operate criteria for acceptance of transfer of responsibility, which to a large extent satisfy the framework for transfer of responsibility set out in the European Agreement on Transfer of Responsibility for Refugees.
- States do not apply policies on transfer regardless of which contracting State the refugee seeks to transfer from, however, but application depends to a large degree of

whether that State is party to the European Agreement or is a State with which a relevant bilateral agreement has been concluded.

- Furthermore, the application of the criteria determining the point of time for transfer of responsibility continues to pose problems despite the efforts and intentions which led to the adoption of the modified criteria of the European Agreement, which aimed specifically at addressing this question of interpretation.
- With one exception, States do not keep or release official statistics on transfer of protection cases. Based on mainly rough estimates provided by the state officials it is however clear that the total number of formal transfers is small and generally do not exceed 25 accepted transfers a year per country. In most States the reported number is much lower and four States had seen no cases in the last five years.
- With a few exceptions, the formal transfers, who take place, are - maybe as a result of immigration policies - linked to a previously obtained residence permit issued on basis of family links to the second country.
- Transfer of protection status is in all States limited to Convention refugees, while persons under subsidiary protection do not benefit.
- Despite uncertainty as to the legal basis in international or regional standards, the all-important response to the question of applying extraterritorial effect to refugee status determination carried out by other States positive, and only two of the studied States explicitly reject this construction in policy as well as in practice
- Likewise a big majority of States finds that accepting transfer of responsibility for the issuance of travel documents implies accepting main responsibility for the full protection of the refugee, including all the rights flowing from Articles 3 to 34 of the 1951 Convention, and do not consider that the first State should continue being held responsible for protection of that refugee under the 1951 Convention.
- None of the States covered by this study operates particular rules in relation to unaccompanied minors who request transfer of protection responsibilities.
- Beyond counselling of refugees, who may approach the organisations for advise UNHCR and NGOs are, with a few exceptions, not involved in transfer of protection cases.

We have sketched out six scenarios for how Member States could move forward on this issue. We have taken account of existing legal frameworks, the European integration process to date, and broader refugee protection and refugee integration debates. Ultimately, scenario B largely reflects the existing situation in reacting to refugees who move lawfully. As such, it would be the minimum which Member States should do to expand implementation of their obligations, and broaden use of the apparently successful European Agreement type criteria. Scenarios C, D and F all represent broadly similar situations, with differences in nuances, on opening a proactive opportunity for mobility to people with refugee status or protection in EU Member States. Such mobility could be introduced in an amended Qualification Directive, in an amended Long-Term Residence Directive or in a new Directive specific to the transfer of responsibility and refugee mobility issues.

It seems clear from our research that refugees will, for various reasons, move between Member States. They may not do so very often, and they seem likely to do so for similar

reasons to those EU citizens might have for moving: study, employment and personal or emotional reasons. A system which facilitated such secondary movements, both so that states could know who is moving, why, when and where, and so that people with protection might integrate into EU society at large, would seem to be a useful goal. Such a goal was set out in the Tampere Conclusions, which sought (in paras. 18 and 21):

- Fair treatment of third country nationals who reside legally on the territory of [the EU's] Member States.
- A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens.
- [That] the legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens

While these points do not spell out *equal* treatment with EU citizens, or *equal* treatment of all third country nationals regardless of why they came to the EU Member States or on what basis they were admitted as lawful residents, terms such as 'fair', 'comparable' and 'approximated' suggest that refugee mobility should be dealt with as the mobility of citizens and long-term resident third country nationals has been developed. Criteria need to be set out, and limitations. In the special case of refugees, attention also needs to be given to the issue of their protection.

Thus, a system which facilitated and regulated secondary movements between Member States would be useful in helping to ensure that all Member States react to refugees' movement by upholding their international obligations, and it could also be productive and conducive to the sense of belonging to craft appropriate rules to proactively allow refugees to take up freedom of movement in the EU.

Appendix One: Questionnaire (Officials)

Study on the Transfer of Protection Status in the EU

Questionnaire

State: _____

Interviewees: _____

Date: _____

A. Transfer in general

1. Do you have experience with people requesting a transfer of protection status, either arriving in or departing from your country?
 - a. If yes, where are the applicants typically going to or coming from?

(Of interest is whether they are chiefly neighbouring states/EU Member States/Candidate countries/any potential link to the Dublin regulation or “safe third country” transfers prior to initial status determination?)

2. Which types of status are requested for transfer? (- 1951 Convention status, subsidiary protection status⁸⁸, temporary protection status?)

3. Is your state a party to the European Agreement on Transfer of Responsibility of Refugee Status?⁸⁹

⁸⁸ In accordance with the draft Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, persons eligible for subsidiary protection means a third country national or a stateless person who does not qualify as a refugee under the 1951 Refugee Convention but in respect of whom it has been shown that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a risk of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment; or
- (c) serious and individual threat to his or her life or person by reason of indiscriminate violence in situations of international armed conflict.

⁸⁹ Concluded under the auspices of the Council of Europe on 16. October 1980

- a. If yes, why?
 - b. If no, why not?
 - c. If yes, how has the Agreement been implemented into national law and practice?
4. Have your state concluded any bilateral agreements on the transfer of protection status?
(Please list agreements concluded)
- a. If so, why did you choose to create a bilateral agreement? What are the components of this/these agreement(s)?
 - b. If not, why not?

B. Statistical information

5. Do you keep statistics on transfers?
- a. For incoming transfer requests and grants?
 - b. For refugees who are leaving on basis of their protection status being transferred to another country?
- If not, why not?
6. Please, provide statistics or, in case statistics are not available in your country, approximate numbers concerning the last five years (1999 – 2003) reflecting the following aspects: requests for transfer made; requests for transfer agreed upon; countries of origin of persons concerned; first state of protection; reasons justifying rejection

	number of requests		number of transfers granted		countries of origin of persons	First states of protection	reasons justifying transfer	reasons justifying rejection
	1951	Subs	1951	Subs				
1999								
2000								
2001								
2002								
2003								

C. Criteria for transfer of refugee status:

7. What are the criteria for transfer?
 - a. (- Recognition of 1951 Convention refugee status in the first state of protection - duration of right of residence granted to the refugee granted in your country - fears in the country which had granted protection in the first place - other?)
 - b. Pursuant to which provisions (please enclose reference documents – policy or legal texts)

8. Do you ask the State, which previously granted its protection about any aspects of the refugee's situation (family set-up etc.)?

9. Do you examine requests for transfer in light of the cessation and exclusion clauses in accordance with your legal doctrine or your case law?

10. May there in your country be specific regional approaches to legislation and application of provisions relating to transfer of protection status?

If so, please detail

D. Scope of transfer:

11. When refugees seek to transfer their status to your country do you look at giving them:
 - a. Travel documents? - Why or why not?

 - b. Status as refugees? - Why or why not?

 - c. Full protection? – Why or why not?
12. When examining the request for transfer of status, do you then adhere to UNHCR Executive Committee Conclusion No. 12 (XXIX) - 1978 on "extraterritorial effect of the determination refugee status" which implies that refugee status determined by one contracting state will normally be recognized by the other and only called into question in exceptional cases?
 - a. If no: please explain why not?

 - b. In those cases where you do not apply extraterritorial effect to refugee status determined by the state which previously granted protection,

would you then restart adjudication of refugee status automatically or only upon receipt of an explicit request from the person concerned?

13. How do you regulate questions of cessation, exclusion, cancellation and revocation of refugee status in relation to refugees or others in need of international protection who have transferred to your country?

14. Do you consider the possibility of dual protection and what conclusions do you draw? (Have you come across any cases of dual protection or absence of protection after the event? – Do you have any specific examples?)

15. Are there within your country varying regional approaches to the scope of transfer to take place? - If so, please detail

E. Transfer of subsidiary protection

16. Do you allow for transfer in cases of persons already benefiting from a form of protection other than that provided for under the 1951 Refugee Convention, i.e. subsidiary forms of protection or temporary protection?
 - a. If no, why not?
 - b. If yes, under what conditions and pursuant to which provisions (please enclose documentation) is this possible?
 - c. If yes, would you then look at giving them:
 - i. travel documents? (specify type of document)
 - ii. protection status? (specify type of status)
 - iii. protection? (specify scope of protection)
 - d. If you do accept transfer of subsidiary protection, do you then automatically recognise the subsidiary protection status determined by the state, which previously granted protection? - If no, please explain
 - e. In those cases where you do not accept the status determination of the first state, would you then restart adjudication of (subsidiary) protection status automatically or only on explicit request from the person concerned?
 - f. May there be different regional approaches to the question of transfer of subsidiary protection?

F. Arrangements for transfer of protection status

17. What are the arrangements for such transfer? – In particular:
- a. What documents do you use as a basis for decisions (refugee identity card, residence permit, travel document etc.)?
 - b. Do you bring the *request* for transfer to the attention of the State which previously granted refugee (or subsidiary) protection?
 - c. Are dossiers transferred?

What are the conditions for transferring a dossier to another State?

How often has a dossier been transferred?

- d. Do you notify the other State if the request for transfer is *granted* and return to it the documents it issued? - If not, why not?
18. What are the terms of validity of travel documents issued in your country?

G. Administrative units and authorities responsible/involved:

19. What administrative units or institutions are responsible in your country for dealing with requests for transfer of protection status and the issuance of travel documents?

20. Are the authorities responsible for transfer of protection status the same as those responsible for ordinary refugee status determination procedures?

H. Procedures applied and effects

21. What procedure do you use for determining the acceptability of transfer of status/protection/travel document?
- a. Explain the various steps from the very lodging of an application for transfer

 - b. May a request for transfer of protection status be lodged from within as well as from outside your country?
22. Does your national legislation or practice include any possibility for lodging an appeal against (or a requesting a review of) a decision denying transfer of protection status?
- a. If so, to which body/bodies and under what national provisions?

 - b. Does the lodging of an appeal/request for review have suspensive effect on any order to leave the country?

I. Rules relating to minors

23. Does your national legislation or case law contain any specific provisions or guidelines with regard to the transfer of protection status of minors and unaccompanied minors? – If so, what are the conditions?

J. Role of UNHCR, other international organisations or NGOs

24. Does UNHCR, other international organisations and/or NGOs have any role to play in these cases, according to your national legislation or practice?

K. The European Agreement on the Transfer of Responsibility for Refugees of 1980

25. What do you think of the Agreement?
26. Do you encounter any implementation problems?
27. Is it a useful instrument or not?
(Please motivate your replies)

L. Transfer of protection status from the perspective of the persons under protection

28. Why do you think people seek to transfer their protection status? What do they ask or indicate themselves?
29. Why might people not seek to transfer status? What problems do they indicate?
30. Are you aware of any applications for transfer of protection matching to earlier Dublin or “safe third country” transfers?
31. Does your country require an entry visa for people who are recognised as refugees/with subsidiary protection in other (member) states?

If so, what is the reasoning for that?

Please, explain the decision procedure for granting such a visa or not

M. Future scenarios for transfer of protection

The EU Commission identified in November 2000 that conditions for transfer of protection of refugees as part of a common European Asylum system needed further consideration. This became even more apparent when negotiations on the Directive on long term residence status for third country nationals led to a decision that a separate directive on the extension of long-term residence status to refugees and persons under subsidiary protection should be tabled.

32. What would you like to see an EU directive focus on? What problems should be solved through a Directive?
- Travel documents
 - Protection
 - Status
 - Other (please indicate)
33. When common definitions, common procedures and common status relating to refugees and other persons in need of protection have been reached within the EU, would you then (still) consider it necessary to have specific directive provisions relating to the transfer of protection status?
34. Would low-level substantial agreements on qualification and/or procedures have an impact on your state's ability to accept transfers?
35. Do Schengen/Passport Unions alter considerations on the need to transfer status?

36. Bearing in mind the conclusions of the Tampere European Council Conclusions (1999) that third country nationals should be treated as own nationals in a number of respects, would you then consider that refugees should be able to enjoy freedom of movement within the EU to the same extent as nationals? - please motivate your reply

37. Which category of persons is easiest to accept for transfer:

- a. those who were granted protection in another state on basis of an application for asylum lodged within that state (spontaneous asylum seekers) – or
- b. those who were accepted for resettlement by that state on basis of recognition of refugee status determined by UNHCR?

38. Would it alter the decision if the person had benefited from Protected Entry provisions?

39. For both resettlement and PEP, would that – like Dublin – indicate notion of greater link between refugee and a particular state?

40. The European Agreement on the Transfer of Responsibility for Refugees is already in force in several of the EU Member States

How do you see the future of this agreement? - Would you have any suggestions, including possible specific amendments of the Agreement?

If so, please elaborate

Appendix Two: Questionnaire (Refugees)

Questionnaire: Transfer of Protection status

Refugees

1. Why did you need to move to another Member State after being recognized as refugee? Was this for reasons of:
Employment
Study
Marriage/family reunification/formation
Retirement
Better welfare
Language
People and culture
Other – if so _____
2. Would it have been possible to move to another Member State without requesting transfer of protection, e.g. by requesting a residence permit which would allow to work in the other Member State ?
3. How long were you in the first country after being recognised as a refugee?
4. How long were you in the second country before requesting a transfer of refugee status?
5. Did you initially request asylum in the second country and were you then sent to the first country in line with the Dublin regulation?
6. Do you think lots of refugees move between countries after receiving protection? If so, why – if not, why not?
7. How was your experience with the transfer of protection procedure? Did you encounter any problems? Was the procedure for obtaining transfer of protection clear to you? E.g. did you have enough information on the procedure?
8. Who was involved in the procedure? E.g. lawyers, NGOs, or others? To what end were these actors/agents involved?
9. What help or advice did you expect from the authorities of the States you moved from and to when requesting transfer of protection? What help or advice was given in practice?

Appendix Three: Minimum standards of treatment of refugees under the 1951 Convention

	same treatment as aliens	most-favourable treatment accorded to foreign nationals	same treatment as nationals of State of stay	same treatment as nationals of the state of habitual residence of the refugee	specific treatment of refugees as refugees
Art. 3 – non-discrimination	if within the territory whether legally or illegally				
Art. 4 – Freedom of Religion			if within the territory whether legally or illegally		
Article 7 Exemption from reciprocity	if within the territory whether legally or illegally				
Article 8 – Exemption from exceptional measures					In relation to any contracting state
Article 9 – Provisional measures					In relation to any contracting state
Article 10 – Grant of continuity of residence					state of residence
Article 11 – Sympathetic consideration to establishment of and issue of travel documents to Refugee Seamen					in relation to state whose flag the ship on which the refugee is serving, is flying
Article 12 – Recognition of the law of personal status					To be governed by law of country of domicile or residence
Article 13 – Movable and immovable property	In relation to any contracting state				
Article 14 – Artistic rights and industrial property				within the territory whether legally or illegally	
Article 15 – Right of association		lawfully staying in the territory			
Article 16 (1) Free access to courts of law on the territory of all contracting states"			within the territory whether legally or illegally		
Article 16 (2) and (3) – Matters pertaining to access courts, including legal assistance and exemption from <i>cautio judicatum solvi</i>.				In relation to any contracting state	
Article 17 – Wage-earning employment		lawfully staying in the territory			
Article 18 – Self-employment	lawfully in the country				
Article 19 – liberal	lawfully staying in				

	same treatment as aliens	most-favourable treatment accorded to foreign nationals	same treatment as nationals of State of stay	same treatment as nationals of the state of habitual residence of the refugee	specific treatment of refugees as refugees
professions	the territory				
Article 20 – Rationing			Within the territory whether legally or illegally		
Article 21 – Housing	lawfully staying in the territory				
Article 22 (1) – primary education			Within the territory whether legally or illegally		
Article 22 (2) – education other than primary education	Within the territory whether legally or illegally				
Article 23 – Public relief			lawfully staying in the territory		
Article 24 – Certain matters of Labour legislation and social security			lawfully staying in the territory		
Article 25 – Administrative assistance					state of residence
Article 26 – Freedom of movement	lawfully in the territory				
Article 27 – Issue of identity papers					within the territory whether legally or illegally
Article 28 – Issue of travel documents					lawfully staying in the territory
Article 29 – Fiscal charges			In relation to any contracting state		
Article 30 – Permission to transfer of assets					relating to assets brought into country of (former) residence
Article 31 – Exemption from penalties in respect of illegal entry or presence					within the territory whether legally or illegally
Article 32 – limitations on liability of expulsion					lawfully in the territory
Article 33 – prohibition against refoulement					within the territory whether legally or illegally

Appendix Four: Criteria of entitlements to treatment in accordance with the 1951 Convention

	Simple presence	Lawful presence	Lawful residence
Art. 3 – non-discrimination	At least same treatment as is accorded to aliens	At least same treatment as is accorded to aliens	At least same treatment as is accorded to aliens
Art. 4 – Freedom of religion	At least the same treatment as is accorded to nationals of that contracting state	At least the same treatment as is accorded to nationals of that contracting state	At least the same treatment as is accorded to nationals of that contracting state
Article 7 – Exemption from reciprocity	At least same treatment as is accorded to aliens generally	At least same treatment as is accorded to aliens generally	At least same treatment as is accorded to aliens generally - exemption from <i>legislative</i> reciprocity after three years of residence
Article 8 – Exemption from exceptional measures	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status
Article 9 – Provisional measures	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status
Article 10 – Grant of continuity of residence			Specific treatment by virtue of refugee status
Article 12 – Personal status			to be governed by laws of country of domicile or residence
Article 13 – Movable and immovable property	Not less favourable than the treatment accorded to aliens generally in the same circumstances	Not less favourable than the treatment accorded to aliens generally in the same circumstances	Not less favourable than the treatment accorded to aliens generally in the same circumstances
Article 14 – Artistic rights and industrial property	Same protection as is accorded in that territory to nationals of the country in which he has his habitual residence	Same protection as is accorded in that territory to nationals of the country in which he has his habitual residence	Same protection as is accorded nationals (of this country of "habitual residence")
Article 15 – Right of association			The most favourable treatment accorded to nationals of a foreign country, in the same circumstances
Article 16 (1) Free access to courts of law on the territory of all contracting states"	As nationals in the same circumstances	As nationals in the same circumstances	As nationals in the same circumstances
Article 16 (2) and (3) – Matters pertaining to access courts, including legal assistance and exemption from <i>cautio judicatum solvi</i> .	Same treatment as nationals of country habitual residence	Same treatment as nationals of country habitual residence	Same treatment as nationals (of this country of "habitual residence")
Article 17 – Wage-earning employment			Most favourable treatment accorded to nationals of a foreign country in the same circumstances (better treatment if three years of residence or spouse/child of nationality of country of

			residence)
Article 18 – Self-employment		Not less favourable than the treatment accorded to aliens generally in the same circumstances	Not less favourable than the treatment accorded to aliens generally in the same circumstances
Article 19 – liberal professions			Not less favourable than the treatment accorded to aliens generally in the same circumstances
Article 20 – Rationing	Same treatment as nationals	Same treatment as nationals	Same treatment as nationals
Article 21 – Housing			Not less favourable than the treatment accorded to aliens generally in the same circumstances
Article 22 (1) – primary education	Same treatment as is accorded to nationals	Same treatment as is accorded to nationals	Same treatment as is accorded to nationals
Article 22 (2) – education other than primary education	Not less favourable than the treatment accorded to aliens generally in the same circumstances	Not less favourable than the treatment accorded to aliens generally in the same circumstances	Not less favourable than the treatment accorded to aliens generally in the same circumstances
Article 23 – Public relief			Same treatment as nationals
Article 24 – Labour legislation and social security			Same treatment as nationals ⁹⁰
Article 25 – Administrative assistance			Specific treatment by virtue of refugee status
Article 26 – Freedom of movement		Same as aliens generally in the same circumstances	Same as aliens generally in the same circumstances
Article 27 – Identity papers	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status
Article 28 – travel documents			Specific treatment by virtue of refugee status
Article 29 – Fiscal charges	Same treatment as nationals in the same circumstances	Same treatment as nationals in the same circumstances	Same treatment as nationals in the same circumstances
Art 30 – Transfer of assets			Specific treatment by virtue of refugee status
Article 31 – Exemption from penalties in respect of <i>illegal</i> entry or presence	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status
Article 32 – Limitations on liability of expulsion		Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status
Article 33 – prohibition against refoulement	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status	Specific treatment by virtue of refugee status

⁹⁰ in certain specified areas and subject to certain conditions and/or limitations. Several states made reservations on Article 19 paragraph 1(b), but most of them were later withdrawn, cf. Paul Weis p. 192.

List of respondents to questionnaire and persons interviewed for Part 2⁹¹

AUSTRIA

Administrations

- Dr. Martin Hartig, Asyl und Betreuung, Federal Ministry of the Interior
- Mag. Maria M. Markovics, Abteilung III/4 (Migration), Federal Ministry of the Interior
- Franz J. Schmickl, Department for Legal Affairs and the Dublin Regulation, Federal Asylum Office, Federal Ministry of the Interior
- Ms Alexandra Schrefler-König, Department II/3, Federal Ministry of the Interior

UNHCR

- Adriano Silvestri, Training Officer

BELGIUM

Administrations

- Frank Carpentier, International Relations, The Office for the Commissioner General for Refugees and Stateless Persons
- Marleen Maes, Asylum and Immigration

UNHCR

- Peter van der Vaagt, Head of legal section

DENMARK

Administrations

- Christian Holm, Danish Immigration Service
- Dorit Hørlyck, Ministry of Refugee, Immigration and Integration Affairs
- Tanja Krabbe, Ministry of Refugee, Immigration and Integration Affairs

FINLAND

Administrations

- Toumas Helinko, Refugee Department, Ministry of the Interior
- Annikki Vanamo-Alho, Refugee Department, Ministry of the Interior

FRANCE

Administrations

⁹¹ The refugees interviewed for Part 2 remain, for obvious reasons, anonymous.

- Sylvia Célestin, Bureau des Étrangers Relevant du Régime Général et du Droit Communautaire, Direction des Libertés Publiques et des Affaires Juridiques, Ministry of the Interior
- Didier Mouton, Office Français de protection des réfugiés et apatrides (OFPRA)
- Marcel Berger, Office Français de protection des réfugiés et apatrides (OFPRA)

UNHCR

- Marie-Noëlle Thirode, Service de la Protection

GERMANY

Administrations

- Mr Frank Mengel, Head of Section M 3 (Asylum/Asylum Procedure), Federal Ministry of the Interior
- Mr Maik Pawlowsky, Adviser, Section M 3 (Asylum/Asylum Procedure), Federal Ministry of the Interior
- Mr Rainer Krappen, Adviser, Section M 6 (European Harmonisation), Federal Ministry of the Interior
- Mr Dr. Christoph Ehrentraut, Adviser, Section M 6 (European Harmonisation), Federal Ministry of the Interior
- Mr Thomas Bendiek, Adviser, Section M 1 (General Aspects of Migration), Federal Ministry of the Interior
- Mr Hans-Ludger Löbber, Section M 3 (Asylum/Asylum Procedure), Federal Ministry of the Interior

UNHCR

- Anja Klug, Legal Officer

GREECE

Administrations

- Nikolaos Tasiopoulos, Police Lieutenant General, Hellenic Police Headquarters, Ministry of Public Order
- Tatiana Papadopoulou, Deputy Legal Counsellor, Hellenic Ministry of Foreign Affairs

IRELAND

Administrations

- Alan Kelly, Asylum Policy Division, Department of Justice, Equality & Law Reform

ITALY

Administrations

- Renato Franceschelli, Department of Civil Liberties and Immigration, Ministry of Interior

- Mr. Carbone, Head of Asylum and Policy Section, Department of Civil Liberties and Immigration, Ministry of Interior
- Sara Plazzi, Officer in charge of the Asylum and Dublin Unit of the Police Department

Italian Refugee Council

- Maria de Donato

LUXEMBOURG

Administrations

- Mr Jean-Paul Reiter, Attaché de gouvernement, Ministry of Justice

NETHERLANDS

Administrations

- Frank A.M. Wuijts, Senior Policy Officer, Immigration Policy Department, Ministry of Justice
- Michelle van de Scheur, Policy Officer, Immigration and Naturalization Service (INS), Ministry of Justice

PORTUGAL

Administrations

- Dr. Claudia Rocha, Coordinator, Ministry of Interior, Asylum and Refugee Department
- Dr. Gabriel Catarino, Director Geral, Ministry of Interior, Aliens and Border Service

SLOVAK REPUBLIC

Administrations

- Anne Sidova, Director of the Legal Department, Migration Office
- Roman Pochylý, senior official, Department of System and Information, Migration Office
- Eveta Kucerova, senior official, Department of System and Information, Migration Office
- Alena Kurecova, Migration Office
- Ms Simorova, Deputy Director of Aliens and Border Police Headquarter

UNHCR

- Pierfrancesco Maria Natta, Representative
- Jan Sikuta, Legal Officer

SPAIN

Administrations

- Gloria Bodéjon Alonco, Subdirectora General de Asilo, Oficina de Asilo y Refugio, Direccion General de Extranjeria e Inmigracion
- Julián Prieto Hergueta, Subdirector General Adjunto de Asilo, Oficina de Asilo y Refugio, Direccion General de Extranjeria e Inmigracion

UNHCR

- Deborah Elizondo, Head of Protection
- Pablo Zipata, Protection Officer

SWEDEN

Administrations

- Fredrik Beijer, Principal Administrative Officer; Asylum Division, Migration Board
- Ludwig Lindegren, Head of Section, Asylum Division, Migration Board

SWITZERLAND

Administrations

- Jürg Horni, Deputy Head of Division, Division Stay and Return, Federal Office for Refugees

NGOs

- Jürg Scheitenleib, Head, Swiss Refugee Council

UNITED KINGDOM

Administrations

- Andrew Jackson, Head of European Asylum Policy Unit, Immigration and Nationality Directorate (IND), Home Office
- Mary Halle, Policy Officer, Asylum Policy Unit, Asylum and Appeals Policy Directorate, IND, Home Office
- Sean Halloran, Policy Officer, European Asylum Policy Unit, IND, Home Office
- Auffea Woodhall, Asylum case work, IND, Home Office

UNHCR

- Christian Mahr, Legal Officer

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- Elspeth Guild, University of Nijmegen; Partner, Kingsley Napley, London

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- Christoph Bierwirth, Senior Legal Adviser
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- Carina van Eck, Convention Plus Unit

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- Mr Jörg POLAKIEWICZ, Deputy Head of the Legal Advice Department and Treaty Office, Directorate General I
- Nabil Benbekhti, UNHCR Liaison Office, Council of Europe

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