



Withdrawal of reception conditions of asylum seekers

An appropriate, effective or legal sanction?

July 2018



Introduction*

The reduction or withdrawal of material reception conditions for asylum seekers constitutes a sensitive and contested area of the Common European Asylum System (CEAS). Ostensibly, given that the obligatory standards for reception conditions in national legal systems stipulate the minimum level of provisions necessary to ensure subsistence, the withdrawal of these conditions is a humanitarian concern. The reduction or withdrawal thus carries the risk of destitution and suffering on the part of the asylum seeker. It should be noted also that the minimum standard is defined differently across national legal systems, a problem in and of itself.

However, across national systems, both legislation and practice would suggest that the reduction or withdrawal of reception conditions is considered and used as a tool for immigration control, and one especially deployed to prevent 'abuse' of the system. This applies both within national legal systems which have transposed the recast Reception Conditions Directive¹ into national law, and those which are not bound by the Directive.

Recital 25 of the Directive provides that:

“The possibility of abuse of the reception system should be restricted by specifying the circumstances in which material reception conditions for applicants may be reduced or withdrawn while at the same time ensuring a dignified standard of living for all applicants.”

It is interesting to note that the language of this provision describes the entire framework of the reduction and withdrawal of material reception conditions as ultimately a method of curbing the possibility of 'abuse' of the asylum system. For the purposes of the Directive, material reception conditions are defined in Article 2(a) as “the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance”, excluding health care, education and access to the labour market. At the same time, the Recital requires a “dignified standard of living” to be ensured as a minimum.

The reduction or withdrawal of material reception conditions functions not only as a method of adjusting the level of support to the actual individual needs of asylum seekers, but also as a sanction for having exploited the reception system through bad behaviour, lack of genuine need, or a refusal to comply with demands. In this context, it is unsurprising that national practices relating to the withdrawal and reduction of material reception conditions for asylum seekers are often influenced by the presumption of abuse which underlies these provisions, despite the requirement in the Directive that decisions should be taken “individually, objectively and impartially.”²

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¹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, *OJ* 2013 L180/96.

² Article 20(5) recast Reception Conditions Directive.

Article 20 of the Directive, which provides the possibility for Member States to reduce or, in exceptional and duly justified cases, withdraw material reception conditions, allows for reduction or withdrawal in cases where an applicant:³

- ❖ abandons the place of residence determined by the competent authority without informing it or, if requested, without permission;
- ❖ does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law;
- ❖ has lodged a subsequent application as defined in Article 2(q) of the recast Asylum Procedures Directive;
- ❖ for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State; or
- ❖ has concealed financial resources, and has therefore unduly benefited from material reception conditions.

The same Article adds that sanctions may be imposed if the applicant has seriously breached the rules of the accommodation centres or shown seriously violent behaviour.⁴

In relation to material reception conditions, the recast Reception Conditions Directive has two aims: to reduce secondary movements of asylum seekers between Member States, and to ensure asylum seekers have a dignified standard of living. Member States also look to these provisions to prevent the possible abuse of their reception systems, for example to prevent generous reception conditions from becoming a 'pull factor' for asylum seekers, and to facilitate the expulsion of asylum seekers whose application has been rejected.

Academics have observed that by framing the reception conditions of asylum seekers as a migration control consideration, states' focus on the Directive risks neglecting the humanitarian concerns raised by the reduction or withdrawal of reception conditions, and the potential of these measures to bring about destitution and suffering on the part of asylum seekers.⁵ Making asylum seekers destitute is also counter-productive from a policy perspective, as it results in creating more irregularity than state control over migration flows.⁶

The provision for reduction and withdrawal of reception conditions has also been criticised by UNHCR in the past, which has pointed out that the core content of human rights applies to people in all situations, including asylum seekers who have infringed regulations in relation to the processing of their claims. There is also the possibility that children or family members might be unfairly affected by the actions of their relatives.⁷

³ Article 20(1)-(3) recast Reception Conditions Directive.

⁴ Article 20(4) recast Reception Conditions Directive.

⁵ See e.g. L Slingenbergh, *The Reception of Asylum Seekers under International Law: Between Sovereignty and Equality* (Hart Publishing 2014), Chapter 2.4.8: 'Reduction and Withdrawal of Reception Conditions'.

⁶ ECRE, *Comments on the Commission proposal for a Dublin IV Regulation*, October 2016, available at: <https://bit.ly/2q9vDvJ>, 5.

⁷ UNHCR, *Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, April 2015, available at: <https://bit.ly/2KLNyjq>.

Academics have also pointed to the lack of clarity in EU law, for example on the question of what constitutes a “serious breach” under Article 20(4) of the Directive, and to what extent sanctions can include expulsion from accommodation centres.⁸

This briefing will explore these questions by examining national legal frameworks and practice in order to identify whether there are circumstances in which the desire to restrict the possibility of abuse of the asylum system can take precedence over the need to ensure an “adequate” or “dignified” standard of living for all applicants throughout the status determination process.⁹

This briefing examines three grounds in the Directive which allow for the reduction of withdrawal and reception conditions, and the manner in which these are interpreted in national practices: (1) financial resources, either “concealed” or obtained through employment; (2) the “abandonment” of a place of accommodation; (3) the lodging of a subsequent asylum application. It then analyses the possible sanctions and/or withdrawal of conditions for reasons of “serious breach” of the house rules of a reception centre. In addition, it will consider the requirement to ensure a “dignified standard of living” and the assessment of risks of destitution where reception conditions are withdrawn.

The grounds transposed in domestic law

The following table shows which of the grounds for reduction or withdrawal of reception conditions provided in the recast Reception Conditions Directive have been transposed into (or are also present in) national legislation in each country. As will be seen below, serious breach of house rules and violent behaviour appear as grounds for withdrawing reception conditions in national law, whereas this is not straightforwardly established in the Directive. It should also be noted that the **United Kingdom** chose to opt out of the recast Reception Conditions Directive. As non-EU Member States, **Switzerland**, **Serbia** and **Turkey** are also not bound by the recast Reception Conditions Directive, but their asylum practices will be examined in this briefing for comparative purposes. The special case of **Ireland** should also be noted. Having previously not opted into the Reception Conditions Directive, the Irish government announced its intention to opt in to the Directive in 2017, and transposed it into national legislation through a Statutory Instrument published in July 2018.¹⁰

	Abandonment of residence	Disclosure of information / Attendance of interview	Subsequent application	Delay in applying	Concealed Resources	Serious breach of rules
AT	√	x	√	x	√	√
BE	√	√	√	x	√	√
BG	√	x	x	x	x	x
CY	√	√	√	√	√	√
DE	x	x	x	x	x	x

⁸ A Baldaccini, E Guild and H Toner, *Whose Freedom, Security and Justice?: EU Immigration and Asylum Law and Policy* (Hart Publishing 2007), 220.

⁹ The terms appear in Articles 17(2) and 20(5) recast Reception Conditions Directive respectively.

¹⁰ Irish European Communities (Reception Conditions) Regulations 2018, S.I. No 230 of 2018.

ES	√	x	x	x	√	√
FR	√	√	√	√	√	√
GR	√	√	√	√	√	√
HR	√	x	√	x	√	√
HU	√	√	√	x	√	√
IE	x	√	x	x	x	√
IT	√	√	√	x	√	√
MT	√	√	x	x	√	x
NL	√	x	x	x	x	√
PL	√	x	x	x	x	√
PT	√	√	√	x	√	x
RO	√	√	x	x	x	√
SE	x	√	x	x	x	x
SI	√	x	x	x	x	x
UK	√	√	x	x	√	√
CH	x	√	x	x	√	√
SR	x	x	x	x	√	x
TR	x	x	x	x	√	x

Source: AIDA, Country Reports, 2017 Update. Greece, Ireland and Serbia introduced further grounds in 2018.¹¹

Financial resources

Article 20(3) of the recast Reception Conditions Directive provides for the possibility of Member States to “reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.” The element of bad faith implied by “concealed” differentiates Article 20(3) from circumstances where it merely transpires that an applicant had available resources, in which case states cannot reduce or withdraw reception conditions but are entitled to ask for a refund for costs incurred.¹² At the same time, “concealment” of resources should be read against the backdrop of potential obstacles to effective information provision, understanding of the rules governing reception systems and trust in the asylum process, due to which asylum seekers may fail to promptly declare any resources they may possess.

¹¹ Article 19 Greek Law 4540/2018; Regulation 6 Irish European Communities (Reception Conditions) Regulations 2018; Article 50 Serbian Asylum and Temporary Protection Act.

¹² Article 17(4) recast Reception Conditions Directive.

Declaration of financial resources

There is some variation in national practice when it comes to the point at which an asylum seeker must declare any resources that he or she might have access to, and whether or not this obligation is made clear at the time.

In **Germany** and **Austria**, the obligation is made relatively clear. Asylum seekers are asked to hand over any money they have in cash when they report to the authorities to register their asylum claim, not at the point when the claim is formally lodged.¹³ Asylum seekers are informed by the social services – verbally in Germany, and in written materials in Austria – that any other assets they have at their disposal and also any source of income have to be declared.¹⁴ In **Spain**, only actual incomes are verified, while savings are not, because it is expected that asylum seekers applying for reception conditions do not have sufficient economic resources to provide for their subsistence.¹⁵ Asylum seekers are informed about the criteria for the reduction and withdrawal of reception conditions. In **Romania**, the obligation lies with the General Inspectorate for Immigration (IGI) to analyse an applicant's need, taking into account their material and financial means.¹⁶

In the **United Kingdom**, at the point at which an application for reception conditions (“asylum support”) is made, the applicant completes the form “ASF1”; asylum seekers can get help from the voluntary sector to do this. Applicants have to state as part of the form that they understand the following: “Failure to disclose all necessary information or to provide false information regarding myself or any of my dependents may lead to information being passed to the police or other agencies for investigation. Note that failure to supply the required information may result in your application for support being refused.” The form contains specific questions about financial resources available to the applicant.¹⁷

In **Slovenia**, the declaration of financial resources takes place before an asylum seeker is placed in accommodation. The form regarding their financial resources is part of their accommodation documentation and is filled by the officials of the Ministry of the Interior with the help of an interpreter. The content and the purpose of the form are explained to the asylum seeker and both the official of the Ministry of the Interior and the interpreter have to sign the form together with the asylum seeker.¹⁸

In **Italy**, a self-declaration of financial resources is required by the asylum seeker upon lodging the application, and generally no further investigations into his or her financial situation are made.¹⁹ Recently, there have been cases of refusal of accommodation to asylum seekers by the Prefecture of Pordenone on the premise that they must have had the resources to undertake their journey to Italy. However, to date no withdrawal of previously granted reception conditions has taken place due to the discovery of undisclosed financial resources.²⁰

¹³ Information provided by Asylkoordination Österreich, 18 June 2018; Informationsverbund Asyl und Migration, 21 June 2018.

¹⁴ AIDA, Country Report Germany, 2017 Update, March 2018, available at: <https://bit.ly/2lpbOqa>, 61; Country Report Austria, 2017 Update, March 2018, available at: <https://bit.ly/2tmJVfW>, 66.

¹⁵ Information provided by Accem, 7 June 2018.

¹⁶ AIDA, Country Report Romania, February 2018, available at: <https://bit.ly/2GIET0j>, 69.

¹⁷ Information provided by the British Refugee Council, 7 June 2018.

¹⁸ Information provided by PIC, 18 June 2018.

¹⁹ The authorities' inability to withdraw reception conditions without a concrete assessment of resources has been clarified by courts. See e.g. Italian Administrative Court of Friuli-Venezia Giulia, Decision No 184/2018, 1 June 2018.

²⁰ Information provided by ASGI, 18 June 2018.

In other countries, the obligation is present in law but the asylum seeker is not informed in practice. In **Belgium**, according to the law the asylum seeker should declare any financial resources from the moment he or she makes the asylum application, but in practice the assessment of resources is carried out once the person starts to work in Belgium.²¹

In **Greece**, no specific moment is foreseen by national legislation when the asylum seeker must declare his or her financial means. However, the law provides that within 15 days of the registration of the asylum application, the competent authorities have the obligation to inform the applicant of his or her rights and obligations.²² To this end, national law foresees that the provision of all or part of the material reception conditions depends on asylum seekers' lack of employment or lack of sufficient resources to maintain an adequate standard of living.²³ The latter is examined in connection with the financial criteria set for eligibility for the Social Solidarity Benefit (*Κοινωνικό Επίδομα Αλληλεγγύης*, ΚΕΑ).²⁴ The law also provides that reception conditions can be reduced or withdrawn if it is established that the applicant has hidden his or her financial means, in line with Article 20(3) of the Directive.²⁵

In **Portugal**, neither the law nor administrative guidelines provide for a specific moment when the asylum seeker is required to declare any financial resources he or she might have. However, the law provides for the total or partial reimbursement of the costs incurred through the asylum seeker's reception if it is shown that he or she was in possession of sufficient resources at the time when these were made available. This means that applicants are required to inform the authorities of those resources prior and throughout the provision of material reception conditions as soon as they become available. The information leaflet and the declaration certifying the making of an asylum application handed out by the Aliens and Borders Service (SEF) to asylum seekers prior to the provision of material reception conditions by the Portuguese Refugee Council in the admissibility / accelerated procedure on the territory vaguely states that they are entitled to material reception conditions in case of "economic need", but does not clarify how such a need is assessed, what are sufficient resources or the obligation of asylum seekers to inform the authorities of any sufficient resources they might have while being provided material reception conditions.²⁶

In **Bulgaria**, failure to disclose financial resources as a ground for withdrawal or reduction of reception conditions is not transposed into national legislation, meaning that it cannot be a reason to reduce or withdraw reception conditions.²⁷ In **Malta**, asylum seekers are not formally required to declare any financial resources.²⁸

Threshold of resources / contributions of asylum seekers

There is a lack of consistency across national practices on the basis for reducing or withdrawing reception conditions in situations where an asylum seeker is either found to be in possession of financial means or obtains resources after lodging their application, for example through employment. National practice also – understandably – differs when it comes to the threshold amount of financial resources that an asylum seeker may possess without having his or her reception conditions reduced or withdrawn.

²¹ Information provided by Vluchtelingenwerk Vlaanderen, 13 June 2018. See also AIDA, Country Report Belgium, 2017 Update, March 2018, available at: <https://bit.ly/2Gz4w68>, 69-70.

²² Article 5(1) Greek Law 4540/2018.

²³ Article 17(3) Greek Law 4540/2018.

²⁴ Article 235 Greek Law 4389/2016.

²⁵ Article 19(3) Greek Law 4540/2018.

²⁶ Information provided by the Portuguese Refugee Council, 18 June 2018.

²⁷ AIDA, Country Report Bulgaria, 2017 Update, February 2018, available at: <https://bit.ly/2ErP7Qz>, 46.

²⁸ Information provided by aditus, 21 June 2018.

While some countries (**Belgium, Spain, Poland, United Kingdom**) start to reduce reception conditions in direct proportion to an asylum seeker's income, no matter how small this may be, others allow for asylum seekers to retain a certain level of resources, which is generally defined as being below subsistence level. This is either a fixed amount defined in law (as in **Austria, Italy, the Netherlands and Portugal**) or can be decided on a case-by-case basis by national authorities (as in **Switzerland, Romania and Slovenia**).

Some countries such as **Cyprus** practice a 'zero tolerance' approach when it comes to employment and reception conditions. In Cyprus if an asylum seeker secures employment, the provision of material reception conditions is immediately terminated without taking into account the sufficiency of the remuneration to cover the basic and/or special needs of applicants and their family members. This situation often forces asylum seekers into destitution.²⁹

Threshold of resources for eligibility for reception conditions	
Country	Annual income for single adult
AT	1,320 € in most provinces. In Tyrol the amount is 2,880 €.
BE	Proportional reduction once the applicant starts to work.
CY	No threshold. If any of the applicants secure employment, the provision of material reception conditions are immediately terminated.
DE	Asylum seekers are allowed to keep 200 € on them.
ES	Proportional reduction.
FR	6,422.04 €.
GR	2,400 €.
IE	5,044 €
IT	5,824 € since amount foreseen for social allowance according to case law
NL	5,895 €.
PL	No threshold.
PT	2,440.20 €
RO	Amount defined by IGI.
SI	0.2% of the cost of reception
UK	No threshold.
CH	Amount determined by the Federal Council.

Source: AIDA. note that some amounts officially calculated on a weekly (Ireland) or monthly (Austria, Portugal, Greece) basis have been adapted for comparison purposes.

“Abandonment” of place of residence

Article 20(1)(a) of the recast Reception Conditions Directive provides for the withdrawal or reduction of reception conditions in situations where an asylum seeker “abandons the place of residence determined by the competent authority without informing it or, if requested, without permission”.

²⁹ Information provided by the Cyprus Refugee Council, 26 June 2018. See also AIDA, Country Report Cyprus, 2017 Update, February 2018, available at: <https://bit.ly/2CPFFVt>, 56.

As the Directive contains no definition of what constitutes “abandonment”, national practices vary greatly in their considerations of how long an absence from a reception centre must be in order to constitute “abandonment”. This varies across EU Member States from one overnight absence to an absence of up to two weeks.

Length of absence required for “abandonment” of place of residence	
Length of absence (days)	Countries
<1	IT, SI
1	HR
2	PL
3	AT, RO
7	FR
14	NL
15	HU

Source: AIDA, Country Reports. Less than 1 night is understood as return after curfew or overnight stay outside the place of residence. Note that in the case of **Poland**, a two-day absence leads to assistance being suspended until the person returns, when it is reinstated.

Some countries adopt a particularly strict reading of “abandonment”. In **Italy**, on 16 June 2017, the Prefecture of Naples adopted a new regulation to be applied in Temporary Reception Centres (CAS). The regulation provides for the “withdrawal of reception measures” in case of unauthorised departure from the centre even for a single day, where unauthorised departure is also understood as the mere return after the curfew, set at 22:00, and at 21:00 in spring and summer. ASGI has challenged the regulation before the Administrative Court of Campania claiming a violation of the law, as the Prefecture has effectively introduced a ground for withdrawal of reception conditions not provided in the law.³⁰

In other countries, such as **Belgium**, abandonment of a reception centre is a legal ground for the withdrawal of reception conditions, but the length of absence that would constitute abandonment is not defined.

In **Romania**, the majority of decisions to withdraw reception conditions (60%) in 2017 were issued *in absentia* on the ground of departure from the place of residence without previously informing the Regional Centre. Asylum seekers were not re-accommodated after the first deviation.³¹ Similarly, according to an investigation by Altreconomia, the vast majority of several thousand withdrawal decisions taken in 2016 and 2017 by Prefectures such as Rome and Brescia in **Italy** concerned departure from reception centres.³² The figures do not distinguish between CAS and centres under the System of Protection for Asylum Seekers and Refugees (SPRAR).

³⁰ AIDA, Country Report Italy, 2017 Update, March 2018, available at: <https://bit.ly/2Ga01zb>, 77.

³¹ AIDA, Country Report Romania, 74.

³² Altreconomia, ‘40mila richiedenti asilo tagliati fuori dal sistema di accoglienza in due anni’, 30 May 2018, available in Italian at: <https://bit.ly/2tRv2zR>. According to the report, around 40,000 withdrawal decisions were taken by 58 Prefectures in the period 2016-2017.

Subsequent application

Article 20(1)(c) of the recast Reception Conditions Directive allows for the reduction of withdrawal of reception conditions to be imposed in situations where an asylum seeker has lodged a subsequent application.

According to data from the European Asylum Support Office (EASO), about 55,000 applications, or 8 % of the total number of applications in the EU Member States and Schengen Associated States in 2017, were repeated applications by persons who had already lodged an application previously in the same EU or Schengen Associated country. It should be noted, however, that repeated applications include subsequent applications along with “new” applications lodged after the discontinuation of the previous application due to implicit withdrawal or abandonment, as well as “re-opened applications” where no previous decision was taken. While the absolute number of repeated applicants rose only slightly in 2017, it is actually double the proportion compared to 2016. Hence, the proportion of repeated applications has increased massively, and it can be assumed therefore that the number of subsequent applications has risen too.³³

This raises questions about the growing number of asylum seekers who consider their application to have been wrongfully refused, possibly due to deficiencies in the way claims are processed at first instance, and who may be faced with losing their access to reception conditions while their subsequent application is processed.

Many Member States, including **Austria, Belgium, Cyprus, France, Greece, Croatia, Hungary, Italy** and **Portugal**, allow reception conditions to be withdrawn on the grounds that the asylum seeker has lodged a subsequent application.

In **Hungary**, for example, subsequent applicants are detained in the transit zones and not provided with food or other material reception conditions by the state.³⁴ In **France**, the provision of reception conditions can vary across Prefectures, with Lyon, Marseille, Paris and its surroundings depriving subsequent applicants of reception conditions. In a few cases, subsequent applicants can benefit from these conditions after demonstrating their particular vulnerability and their specific needs in terms of accommodation.³⁵

Serious breach of house rules or seriously violent conduct

Article 20(4) of the recast Reception Conditions Directive allows for “sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.” The wording differs from earlier paragraphs in Article 20, which squarely refer to reduction and withdrawal of reception conditions. Accordingly, it is not clear whether a “sanction” of serious breaches of house rules or of violent behaviour can take the form of withdrawal of reception conditions under the Directive.³⁶

In practice, however, some countries impose withdrawal or reduction of reception conditions as a form of punishment for less serious infractions of the rules of an accommodation centre.

³³ EASO, *Annual report on the situation of asylum in the EU 2017*, June 2018, available at: <https://bit.ly/2KIQWPT>, 33.

³⁴ AIDA, *Country Report Hungary, 2017 Update*, February 2018, available at: <https://bit.ly/2Fnqu8V>, 64.

³⁵ AIDA, *Country Report France, 2017 Update*, February 2018, available at: <https://bit.ly/2BsOFmB>, 78.

³⁶ It should be noted that the proposal to reform the Directive clearly incorporates such circumstances as a ground for withdrawal: European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465, 13 July 2016, Article 19(2)(e).

In **Belgium**, there are different limitations to the enjoyment of reception conditions which can be imposed as a punishment for various infractions of the house rules of a reception centre. The possible sanctions are enumerated in the Reception Act, and include for example the temporary withdrawal or reduction of the daily allowance. As a sanction for having seriously violated the house rules, and thereby putting others in a dangerous situation or threatening the security in the reception facility, the right to reception can be suspended for a maximum of one month.³⁷ This measure was taken against 36 individuals in 2017.³⁸ It is also possible in Belgium to withdraw reception conditions permanently for those who had been temporarily excluded from reception before, subject to the aforementioned sanction, or in serious cases of physical or sexual violence. No applicant was permanently excluded from reception conditions in 2017.³⁹

The fact that the withdrawal and reduction of reception conditions at different levels is permitted by Belgian law as a proportional response to infractions of house rules that range from serious to minor suggests that reception conditions and the threat of their reduction or withdrawal are being utilised as a system of punishment in Belgium which could be at odds with the Directive, which requires a “serious breach” or “serious violence” before sanctions can be imposed.⁴⁰

The Labour Court of Brussels recently referred preliminary questions to the Court of Justice of the European Union (CJEU), with a view to clarifying whether a sanction against individual behaviour can be the basis for reducing or withdrawing reception conditions.⁴¹ If the Court were to consider that the withdrawal or reduction of reception conditions cannot be used as a sanction,⁴² this would have implications not only in Belgium but also in other Member States where the withdrawal or reduction of conditions is imposed as a sanction or punishment for various types of behaviour.

Beyond Belgium, **Romania** also lists a number of sanctions for violations of house rules, which include suspension of the daily allowance for local transport expenses, cultural services, press, repair and maintenance services and expenses for personal hygiene products, as well as temporary and permanent exclusion from the reception centre.⁴³

In **Spain**, the reduction and withdrawal of reception conditions is also used as a method of punishment for less serious and non-violent breaches of the house rules of reception centres, including a failure to participate and collaborate in the activities scheduled for their social and labour integration. Asylum seekers sign a “social contract” where they commit to participate in these measures and accept this as a requirement to benefit from the different sources of support provided.⁴⁴

There have also been reported cases of arbitrary or non-motivated sanctions and punishments in the Melilla Migrant Temporary Stay Centre (CETI) in Spain, where motivations or criteria for withdrawal of

³⁷ Article 45(8) Belgian Reception Act.

³⁸ AIDA, Country Report Belgium 2017, 68.

³⁹ *Ibid.*

⁴⁰ For example, a reduction of the financial allowance may be ordered for conduct that is not defined as a “very serious violation” of house rules: Article 45(8)(6) Belgian Reception Act.

⁴¹ CJEU, Case C-233/18 *Habqin v Federaal Agentschap voor de opvang van asielzoekers*, Reference of 29 March 2018. See also Belgian Labour Court of Brussels, Decision No 2017/AB/277, 22 March 2018.

⁴² UNHCR has stated that it cannot: UNHCR, *Commentaires relatifs à l'avant projet de loi modifiant la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (ci-après « avant-projet de loi »), introduisant des sanctions supplémentaires en cas de manquement grave au régime et règles de fonctionnement applicables aux structures d'accueil*, 22 April 2016, para 10.

⁴³ AIDA, Country Report Romania, 73.

⁴⁴ AIDA, Country Report Spain, 2017 Update, March 2018, available at: <https://bit.ly/2plANDI>, 52.

reception conditions are not clear. One of these cases concerning Moroccan applicants was recognised as eligible for interim measures by the High Court.⁴⁵ The asylum seeker had been expelled from the CETI in Melilla and left in a vulnerable situation, although his appeal was still pending.

In **Italy**, the law provides that reception conditions can be withdrawn or reduced in situations where an asylum seeker has committed a serious violation or continuous violation of the accommodation centre's house rules, or where an asylum seeker's conduct is considered to be seriously violent.⁴⁶ This has been interpreted widely by some Prefectures. On 22 September 2017, the Prefecture of Verona issued a note providing for the automatic withdrawal of reception conditions without any evaluation of individual circumstances in cases such as: violation of the prohibition of smoking and consumption of alcohol and drugs, both inside and outside the centre; and the accumulation of more than one absence from Italian language courses.⁴⁷

Moreover, the law does not clarify what is meant by "serious violations" of the reception centre's house rules and, according to ASGI, this has allowed Prefectures to misuse the provision by withdrawing reception conditions on ill-founded grounds. In 2017, the provision continued to be used in several cases towards asylum seekers who had participated in protests against the conditions of the centre where they were accommodated. This has happened in several cases where asylum seekers protested in order to obtain identification documents, health cards, pocket money or a certificate of attendance of Italian language courses.⁴⁸

Available figures in Italy seem to corroborate an overly broad use of withdrawal provisions. According to the aforementioned investigation carried out by Altreconomia, on the basis of data from 58 out of 100 Prefectures between 2016 and 2017, the number of decisions related to breach of house rules or violent behaviour was 233 in Rome and 37 in Brescia.⁴⁹

The **Netherlands** imposes sanctions for the violation of house rules at reception centres, with the nature of the sanction depending on the severity and frequency of the violation. The possible sanctions are of two different natures: "Reglement Onthoudingen Verstrekkingen" (ROV) measures" and preventative measures.⁵⁰ The ROV measures entail an actual reduction or withdrawal of material reception conditions, and can include the partial withdrawal of spending money and the (temporary or permanent) termination of accommodation. This can last for a period of one week to several months. During this period, the asylum seeker must arrange his or her own access to food and accommodation. In practice, weekly allowances or actual reception are rarely suspended. If this measure is imposed, a small amount of weekly allowance is maintained in order to provide for food.⁵¹

Asylum seekers who seriously violate the house rules of reception centres or who otherwise demonstrate aggressive behaviour may be transferred to Extra Guidance and Supervision Locations (*Extra begeleiding en toezichtlocaties*, EBTL) in the Netherlands. Two such facilities were established at the end of 2017.⁵² In

⁴⁵ High Court of Madrid, Decision 368/2010, 31 March 2010.

⁴⁶ Article 23(1) Italian Legislative Decree 142/2015.

⁴⁷ Prefecture of Verona, Note 66/2017. See *LasciateCIEntrare*, 'Verona e le "facili" revocche dall'accoglienza dei richiedenti asilo', 11 January 2018, available in Italian at: <http://bit.ly/2GidEch>.

⁴⁸ AIDA, Country Report Italy, 77-78.

⁴⁹ Altreconomia, '40mila richiedenti asilo tagliati fuori dal sistema di accoglienza in due anni', 30 May 2018, available in Italian at: <https://bit.ly/2tRv2zR>.

⁵⁰ Dutch Central Organ for the Reception of Asylum Seekers, *Maatregelenbeleid*, available in Dutch at: <https://bit.ly/2IOztXH>.

⁵¹ Information provided by the Dutch Council for Refugees, 15 June 2018.

⁵² AIDA, Country Report Netherlands, 2017 Update, March 2018, available at: <https://bit.ly/2G7z6Eo>, 57.

Switzerland, the law foresees the creation of specific centres for uncooperative asylum seekers. So far no such specific centres have been set up, so this form of accommodation has not had any practical relevance yet. However, it is planned that the first such centre will be opened in Les Verrières, Canton of Neuchâtel in the course of 2018.⁵³ It is worth noting that a similar type of centre existed in Carinthia, **Austria** but was closed in 2012 following heavy criticism.⁵⁴

In **Portugal**, instances of withdrawal of support as a response to breaches of house rules are rare. The consequences of abusive or violent behaviour will in most cases be the transfer of the asylum seeker into private accommodation to ensure the security and well-being of the other inhabitants.⁵⁵ **Slovenia**, for its part, does not provide for any form of reduction or withdrawal of reception conditions other than the monthly allowance of 18 €, which has never been applied in practice. Other forms of reception conditions cannot be reduced or withdrawn.⁵⁶

In **Bulgaria**, there are no sanctions for breaches of house rules, except for destruction of property which can lead to a fine.⁵⁷ It is worth noting, however, that incidents of excessive violence, systematic disorder or theft in reception centres have been arbitrarily punished by the use of detention.⁵⁸ In one such case, the Administrative Court of Sofia ruled out excessive violence as a valid reason for placing an applicant in a closed centre, unless corroborated with evidence of ongoing criminal investigation, prosecution or conviction judgment.⁵⁹

Dignified standard of living and risk of destitution

Article 20(5) of the recast Reception Conditions Directive requires decisions on the reduction or withdrawal of reception conditions to be taken individually, objectively, impartially and in a reasoned manner. In any case, access to health care in accordance with Article 19 of the Directive and a “dignified standard of living for all applicants” has to be ensured by the Member States, even in the case where conditions are withdrawn.

The notion of “dignified standard of living” makes implicit reference to Article 1 of the EU Charter of Fundamental Rights. While the relationship between the “adequate standard of living” afforded to applicants benefiting from material reception conditions under Article 17 and the “dignified standard of living” guaranteed even to those who are excluded from reception conditions is ambiguous in the Directive and raises interpretative questions, the applicability of Article 1 of the EU Charter ensures substantive protection for all applicants. Under an appropriate reading of the right to dignity in the CJEU judgment in *Saciri*,⁶⁰ Member States must therefore ensure the applicant’s subsistence and pay due regard to vulnerability and the best interests of children even where reception conditions have been restricted or withdrawn.⁶¹ This obligation seems to remain unaffected by the current version of the Council and European Parliament text on the proposal to reform the Directive, which refers to a “standard of living in

⁵³ AIDA, Country Report Switzerland, 2017 Update, February 2018, available at: <https://bit.ly/2FoL9tg>, 66.

⁵⁴ AIDA, Country Report Austria, 70.

⁵⁵ AIDA, Country Report Portugal, 2017 Update, March 2018, available at: <https://bit.ly/2lxQFtN>, 69.

⁵⁶ AIDA, Country Report Slovenia, March 2018, available at: <https://bit.ly/2tZwe6P>, 45.

⁵⁷ AIDA, Country Report Bulgaria, 46.

⁵⁸ *Ibid*, 57.

⁵⁹ Bulgarian Administrative Court of Sofia, Decision No 7173, 29 November 2017.

⁶⁰ CJEU, Case C-79/13 *Saciri v Federaal agentschap voor de opvang van asielzoekers*, Judgment of 27 February 2014. See European Database of Asylum Law (EDAL) summary at: <https://bit.ly/2KPFbXy>.

⁶¹ ECRE, *Information Note on the recast Reception Conditions Directive*, July 2015, available at: <https://bit.ly/2tZYyms>, 33.

accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations for all applicants.”⁶²

This requirement of ensuring a “dignified standard of living” – or a “standard of living in accordance with Union law” – raises questions as to whether the Directive implies an obligation on the part of national authorities to assess the risk of an asylum seeker facing destitution when material reception conditions are being reduced or withdrawn, and to ensure that he or she has access to alternative means for basic needs. That said, the aforementioned preliminary reference to the CJEU by the Brussels Labour Court has also sought to clarify whether Article 20(5) requires states to take measures to ensure a dignified standard of living *before* ordering withdrawal of reception conditions, or whether it is sufficient to make this evaluation afterwards.⁶³

The assessment of destitution is not consistently implemented in practice across EU Member States. In countries such as **Cyprus, Italy, Hungary, Poland** or **Romania**, there is no assessment of destitution or vulnerability in law or practice before a decision to reduce or withdraw material reception conditions is taken. In a recent case decided by the Administrative Court of Friuli-Venezia Giulia in **Italy**, the Court upheld the withdrawal of reception conditions of an asylum seeker with psychiatric problems, stating that the medical certificates produced only referred to a “single episode of post-stress anxiety with somatisation” which, according to the Court, does not imply any vulnerability”.⁶⁴ In **Poland**, the Office for Foreigners withdrew material reception conditions in case of a foreigner having a complex form of PTSD in 2017. His psychological condition was not taken into account in the proceedings.⁶⁵ In **Hungary**, the provision setting out the threshold of destitution has been suspended for the duration of the “state of crisis due to mass migration” following the 2017 reform.⁶⁶

In other countries including **Belgium**, the requirement is present in law but is not carried out in practice.⁶⁷

On the other hand, the law in **Germany** clarifies that “basic needs” can never be withdrawn. These are defined as “benefits for covering the needs for food and accommodation including heating, as well as for personal and health care”.⁶⁸ Similarly in **Switzerland**, before any reduction or withdrawal, an assessment of proportionality is made and the subsistence minimum has to be considered. The basic need is defined as “enforcement legal subsistence minimum” (*betriebsrechtliches Existenzminimum*) and differs in each canton.⁶⁹

In **Spain**, the vulnerability of the asylum seeker is taken into account. If the non-fulfilment of the obligations deriving from the housing contract stems from vulnerability (for example, cases of trauma, victims of torture, etc.) the asylum seeker is referred to special assistance facilities instead of having his or her material reception conditions reduced or withdrawn.⁷⁰

⁶² European Parliament and Council, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, 2016/0222 (COD), 15 June 2018, Article 19(2).

⁶³ CJEU, Case C-233/18 *Habqin v Federaal Agentschap voor de opvang van asielzoekers*, Reference of 29 March 2018.

⁶⁴ Italian Administrative Court of Friuli-Venezia Giulia, Decision No 79/2018, 26 March 2018.

⁶⁵ Information provided by the Helsinki Foundation for Human Rights, 6 June 2018.

⁶⁶ Section 18 Hungarian Asylum Decree. Information provided by the Hungarian Helsinki Committee, 13 June 2018.

⁶⁷ Information provided by Vluchtelingenwerk Vlaanderen, 13 June 2018.

⁶⁸ Section 1a(2) German Asylum Seekers' Benefits Act.

⁶⁹ Information provided by the Swiss Refugee Council, 19 June 2018.

⁷⁰ Information provided by Accem, 7 June 2018.

In the **United Kingdom**, before conditions are reduced or withdrawn, an assessment is made of the individual asylum seeker's risk of destitution and ability to provide for his or her own basic needs through alternative means. For this purpose, destitution is defined as "not having access to adequate accommodation or unable to meet their essential living needs now or in the next 14 days".⁷¹

Concluding remarks

There are a number of issues concerning the reduction and withdrawal of reception conditions for asylum seekers in Europe. Trends have developed within national interpretations of EU law and domestic practices that utilise the reduction and withdrawal of reception conditions as a punitive measure arguably beyond what is permitted under EU law. Moreover, the type of behaviour which leads to such punitive reduction or withdrawal is very inconsistent across national practice, as demonstrated for example by the ways in which the "abandonment" of a reception centre is defined. Furthermore, an assessment of the risk that individuals will face destitution should their reception conditions be reduced or withdrawn is not applied in practice across many national systems.

The result is a situation in which reception conditions can be withdrawn arbitrarily or as a punitive measure, which in many cases may lead to asylum seekers facing destitution and unable to access the basic requirements that they need to live at subsistence level.

⁷¹ Information provided by the British Refugee Council, 7 June 2018.

THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database](#) is a database managed by ECRE, containing information on asylum procedures, reception conditions, detention and content of international protection across 23 European countries. This includes 20 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia, United Kingdom) and 3 non-EU countries (Switzerland, Serbia, Turkey).

The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

- ❖ **Country reports**
AIDA contains [national reports](#) documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries. An overview of the reports can be found [here](#).
- ❖ **Comparative reports**
Comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports published so far have explored topics including [reception](#), [admissibility procedures](#), [content of protection](#), [vulnerability](#) and [detention](#).
- ❖ **Comparator**
The [Comparator](#) allows users to compare legal frameworks and practice between the countries covered by the database in relation to the core themes covered: asylum procedure, reception, detention, and content of protection. The different sections of the Comparator define key concepts of the EU asylum *acquis* and outline their implementation in practice.
- ❖ **Fact-finding visits**
AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in [Greece](#), [Hungary](#), [Austria](#), [Croatia](#) and [France](#).
- ❖ **Legal briefings**
Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. [Legal briefings](#) so far cover: Dublin detention; asylum statistics; safe countries of origin; procedural rights in detention; age assessment of unaccompanied children; residence permits for beneficiaries of international protection; the length of asylum procedures; travel documents for beneficiaries of international protection; accelerated procedures; the expansion of detention; and relocation.
- ❖ **Statistical updates**
AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for 2016, the first half of 2017, and 2017.

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