

Brexit and Implications for Asylum & Migration

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- Background to UK EU Membership & Brexit
- UK State of Play on Asylum & Migration
- Withdrawal Bill
- Charter of Fundamental Rights
- Right to Asylum
- Future?

UK Timeline

- Treaty of Accession 1972 (Denmark, Ireland, Norway and the United Kingdom), 22 Jan 1972
- EIF: 1 January 1973
- European Communities Act 1972
- Referendum, 23 June 2016: 51.9% Leave
(72.2% turnout)
- European Union (Withdrawal) Bill, 13 July 2017

1997 Amsterdam Treaty Protocols

- (No. 2) Integrating the Schengen acquis into the framework of the European Union – Access to Schengen Acquis possible
- (No. 3) The application of certain aspects of Article 14 TEC to the UK & Ireland – Border Controls
- (No. 4) The position of the UK & Ireland – Opt out/in Asylum & Migration

CEAS UK “opt-ins” (Amsterdam)

- Temporary Protection Directive 2001 – Recital 24
- Dublin Regulation 2003 – Recital 17
- Reception Conditions Directive 2003 – Recital 19
- Qualification Directive 2004 – Recital 38
- Asylum Procedures Directive 2005 – Recital 32

Migration Policies not opt-in

- Family Reunification Directive 2003 – Recital 17
- Long Term Residence Directive 2003 - Recital 25
- Long Term Residence Directive Amendment 2011 - Recital 14
- Returns Directive 2008 - Recital 26

2007 Lisbon Treaty Protocols

- (No 19) On the Schengen *Acquis* integrated into the framework of the EU
- (No 20) On the application of certain aspects of Article 26 of the TFEU to the UK & Ireland – Border Controls
- (No 21) on the position of the UK & Ireland in respect of the Area of Freedom, Security and Justice – Opt out/in asylum & migration
- (No. 30) On the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom

UK “opt-ins” (Lisbon)

- Dublin Regulation 2013 – Recital 41

⇒ For all other CEAS instruments, UK bound by CEAS Stage 1 (minimum standards)

- EASO Regulation 2010 – Recital 21

European Union (Withdrawal) Bill

- Sec 2(1): ‘EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day’
- Sec 3(1): ‘Direct EU legislation, so far as operative immediately before exit day, forms part of domestic law on and after exit day.’

- Exceptions:

⇒ Sec. 5(4) 'The Charter of Fundamental Rights is not part of domestic law on or after exit day.'

EU Charter

- Right to Asylum (18)
- Non-refoulement (19)
- Effective remedy (47)
- Limitations (Art. 52)

- **Human dignity (1)**
- **Right to life (2)**
- **Physical and mental integrity (3.1)**
- **Torture, inhuman or degrading treatment or punishment (4)**
- **Not to be trafficked (5.3)**
- **Right to liberty and security (6)**
- **Respect for family life (7)**
- **Non discrimination (21)**

Right to Asylum

Is the scope of the protection conferred upon a person to whom the Regulation applies by the general principles of EU law, and, in particular, the rights set out in [Article 18] of the Charter wider than the protection conferred by Article 3 of the European Convention on Human Rights and Fundamental Freedoms ('the Convention')? (**Case C-411/10, NS**, Question 5)

Article 52(4) Charter

‘[I]n so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions’

‘The fundamental right to asylum [...] follows from the **general principles** of [Union] law which, themselves, are the result of constitutional traditions common to the Member States.’ (Advocate General Maduro, Opinion Case C-465/07, *Elgafaji*, para 21, emphasis added)

Bulgaria, France, Germany, Hungary, Italy,
Spain...

⇒ constitutional asylum = subjective right to
be granted asylum for individuals who
meet the relevant criteria.

Article 18

‘The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as “the Treaties”)’.

- Right to asylum shall be guaranteed
- Due respect of the Geneva Convention & its Protocol
- In accordance with the TEU & TFEU (“the Treaties”)

A right to be granted protection

Article 13 Qualifications Directive:

‘Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee’

Article 18 Qualifications Directive:

‘Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection.’ (emphasis added)

Article 24(1):

‘Member States shall issue to beneficiaries of refugee status a residence permit’ (3 years)

Article 24(2):

‘Member States shall issue to beneficiaries of subsidiary protection status a renewable residence permit’ (1 year + 2 years)

‘[A]sylum aims to protect the higher values on which the state itself is founded: national liberation, justice, democracy, and human rights. These values are also at the core of international law, as enshrined in article 1 of the United Nations Charter on the purposes of the United Nations’ (Gil-Bazo, *Asylum as a General Principle of International Law* 2015)

- UK treaty/treaties with EU - Denmark, Iceland, Liechtenstein, Norway, and Switzerland
- ECHR & ECtHR (CoE)
- 1951 Convention Status of Refugees (UN)

- OUP select materials on International Refugee law: <http://opil.ouplaw.com/page/refugee-law>
- <http://www.ncl.ac.uk/nuls/staff/profile/maria-teresa.gil-bazo>
- Email: maria-teresa.gil-bazo@ncl.ac.uk