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European Council
on Refugees and Exiles

Briefing on the Danish asylum policy

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This briefing covers recent developments in Denmark related to asylum policy focusing on:

1. Withdrawal of protection from some Syrians in Denmark
2. Law to outsource asylum processing and refugee protection

For both issues, it provides the relevant background, critical analysis, and an update on the current situation.

Denmark, CEAS and latest asylum statistics

Due to the Danish opt-out from the Justice and Home Affairs area, Denmark is not part of the Common European Asylum System (CEAS). Denmark does apply the Dublin Regulation and the Eurodac Regulation by way of an international/parallel agreement. Furthermore, the Return Directive applies in Denmark due to the Schengen cooperation. Denmark is bound by the European Convention of Human Rights and has ratified the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol.

The number of asylum applications in Denmark has been steadily decreasing since 2015 when [21,316 people applied](#) to 6,266 in 2016, 3,500 in 2017, 3,559 in 2018, 2,716 in 2019 [and just 1,515 in 2020](#) hereof 344 Syrian nationals. As of 30 November 2021, [1,829 new asylum applications](#) have been registered in Denmark of which 288 are Syrian nationals.

The recognition rate in the first instance for Syrian nationals was 99% in 2016, 96% in 2017, 99% in 2018, 94% in 2019 and in 2020 it dropped to 88%. The recognition rate (all nationalities) at first instance in Denmark in 2020 was 44% and 54% for the first four months of 2021. This does not include appeals (second instance), so the actual recognition rate is higher.

The general [misinterpretations or misunderstanding](#) of asylum related statistics apply also in the context of Denmark where a focus on first instance decision-making is used to suggest that people arriving in Denmark are not 'real' refugees.

Denmark has resettled refugees through UNHCRs resettlement scheme since 1989. Until 2016, Denmark received approx. 500 refugees per year, but in the period from 2017 until 2019, Denmark did not resettle any refugees. In 2020, the government decided on a quota of up to 200 refugees, but due to Covid-19 they have not all arrived in Denmark yet.

Withdrawal of protection from some Syrians in Denmark

1. Background

In 2015, Denmark introduced a temporary subsidiary protection status in the Danish Aliens Act section 7(3). This status is in addition to Refugee Status granted to people who meet the criteria of the 1951 Refugee Convention (Danish Aliens Act section 7(1)), and the subsidiary protection e.g., for those who risk torture

or inhuman treatment contrary to Art. 3 of the European Convention of Human Rights (ECHR) (Danish Aliens Act section 7(2)).

The [new status](#) can be granted if the risk of torture or inhuman or degrading treatment is related to a situation of generalized violence. It was introduced as a response to the rising numbers of primarily Syrian refugees arriving in Denmark. Prior to the legislative change, this group would have received “ordinary” subsidiary protection.

After the new temporary protection status was introduced in 2015, most of the Syrians seeking asylum in Denmark continued to receive convention refugee status. This includes Syrians fearing persecution from the Syrian regime due to e.g. evasion of military service i.e. men between the age of 18 and (approx.) 42. The profile of people who were/are granted temporary subsidiary protection are people without recognized individual risks of persecution, which includes women, children under the age of 18, and men older than the age of military service.

In addition, the Danish cessation clause was amended in 2015 so that the cessation clauses of the Refugee Convention no longer apply to subsidiary protection or to the new temporary subsidiary protection status. As a result, a residence permit for someone with a temporary subsidiary protection status can be revoked if the general security situation in the country of origin improves, irrespective of whether the security situation is still severe, fragile, and unpredictable, as long as the improvement is not of a completely temporary nature.

In 2019, the Danish cessation clauses were further amended. Followingly this, stronger links to Denmark are required before the authorities will refrain from cessation decisions based on the respect of family or private life.

2. Assessment of the security situation in Damascus and Rural Damascus

In spring 2019, the Danish Immigration Service started to review the protection needs and residence permits of Syrians with temporary protection status, who originated from Damascus. This followed a statement from the Refugee Appeals Board in February 2019 that the general security situation in Syria had changed which was partly based on information from a joint [fact finding report](#) from the Danish Immigration Service and the Danish Refugee Council published in February 2019.

In late 2020, the Danish Immigration Service expanded their focus on reassessing the protection needs for Syrians to include the whole area of Rural Damascus. The assessment that the security situation has improved beyond “completely temporary” is based on a reduced level of conflict and less security incidents following the Syrian government establishing full control of Damascus (May 2018) and Rural Damascus (March 2020) respectively. The Danish government has been actively involved in initiating [the review](#) of the cases of Syrians and repeatedly and vocally expressed confidence in the claim of the asylum authorities that Damascus and Rural Damascus is safe for return.

[UNHCR](#), countless [experts](#) and [INGOs](#) have strongly rejected the Danish interpretation of the security situation in Damascus and Rural Damascus. 11 out of 12 experts who contributed to Country of Origin (COI) reports by the Danish Immigration Service on which basis the process of reviewing the residence permits was partly initiated [have strongly condemned](#) the Danish asylum authorities’ decision to remove temporary protection for Syrian refugees from Damascus and distanced themselves from the conclusions which the authorities based on the report.

[According to a report](#) on the situation of returnees to Syria by the European Asylum Support Office (EASO) released on 10 June 2021, Syrian authorities continue to arrest, detain, interrogate, torture, and pursue returnees by terrorism courts upon return, including those who had settled their status. Obtaining a security clearance will by no means guarantee a safe return. In the fall of 2021, both [Amnesty International](#) and [Human Rights Watch](#) released reports documenting numbers of cases of Syrians who had faced grave human rights abuses after returning to Syria.

The [European Council](#), the [European Parliament](#) and the [European Commission](#) have issued declarations [on several occasions](#) stating that conditions are not in place for the safe return of Syrian refugees even if voluntary.

The European External Action Service (EEAS) [reiterated](#) in June 2021 that the EU “*shares UNHCR’s assessment that conditions for safe, voluntary and dignified return are not in place in Syria at present*”. This was [reinforced by Paulo Pinheiro](#), Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic, who said end of October 2021 that “*this is not a time for anyone to be thinking that Syria is safe, for its refugees to return home*”.

A [UNHCR report](#) from March 2021 covering Egypt, Lebanon, Jordan, and Iraq, hosting almost 2 million registered Syrian refugees combined, shows that despite nearly 90% being unable to meet their basic needs in their host countries only 2,4% were planning to return. The fact that authorities in [Lebanon](#) and [Turkey](#) have put severe pressure on Syrian refugees to return does not seem to have an impact on the willingness to return, since there [were 6.6 million Syrian refugees](#) worldwide as of March 2021, of whom 5.6 million hosted in countries near Syria.

On 14 September 2021, the European Court of Human Rights made a judgment in the case [M.D. and other v. Russia](#). The case concerns Syrian asylum seekers, who were denied asylum in Russia. The European Court of Human Rights found that it would be a violation of ECHR Art. 2 and Art. 3 if Russian authorities returned the asylum seekers to Syria. The Danish [Refugee Appeals Board has considered](#) the judgment but did not find that there was a need to change the current practice regarding Syrian cases.

3. Current situation and individuals affected

Since 2019, the Danish Immigration Service has made approx. 800 decisions about Syrian refugees. In around 2/3 of the cases, the result was a prolonged residence permit and thus no revocation.

In the period from 1 January 2019 to 31 October 2021, the Danish Immigration Service has [made 376 revocation decisions regarding persons from Syria](#). The first instance decisions of the Danish Immigration Service are automatically appealed to the Refugee Appeals Board that is the highest authority for this type of cases. Of the 376 first instance decisions, [the Refugee Appeals Board has so far examined 258 cases](#) and decided to confirm 99 cases, finalise 14 cases without a decision, send 40 cases back to the Danish Immigration Service, and overturn 105 cases.

Revocation decisions always include an assessment of potential violation of the rights to private or family life (ECHR Art. 8). But in practice, the Danish authorities have a quite restrictive practice that requires a stay in Denmark longer than 6 years or other very strong links to Denmark before the rights to private or family life will protect a person from revocation.

The Danish revocation practice has resulted in several cases where young women with extensive family in Denmark have lost their residence permits, even when it would mean that they would be without close family members upon return to Syria. Family members that have been granted status separately now face a situation where some family members (e.g. a daughter aged 18 or above with no recognized individual risks) have lost their status, while others (e.g. parents and male siblings) have a refugee status and thus can remain in Denmark.

Danish authorities are to date still not carrying out any forced deportations to Syria, as the Danish Government does not cooperate with the Syrian authorities. In May 2021, the Danish Minister of Foreign Affairs [called the Syrian election](#) a “coronation” and declared that Denmark “*stands with the international community, demands implementation of [UNSCR 2254](#)*”.

This means that individuals who have had their status revoked are expected to return to Syria themselves. They will lose the right to work, and any other rights connected with a residence permit in Denmark. They will also lose their homes and have to move to a return centre, which may be in another part of Denmark than where they used to live, for an indefinite period.

Due to the restricted living conditions in Denmark, some Syrians, who have had their refugee status revoked, found it necessary to leave [for other European countries](#) such as Germany, Belgium and the Netherlands. [Reportedly](#), several Syrian families have been granted subsidiary protection in Germany after they arrived from Denmark. These decisions are apparently based on [a CJEU judgment](#) stating that a Member State cannot reject an asylum application as a subsequent application, if the first decision was made in a third country that is not part to the Common European Asylum System, such as Norway or Denmark.

Law to outsource asylum processing and refugee protection

1. Background

On 3 June 2021, the [Danish Parliament adopted](#) a change to the Danish Aliens Act establishing the legal grounds for the transfer of asylum seekers to a third country for asylum processing and potential subsequent refugee protection. The amendments to the Aliens Act state that a foreigner seeking asylum shall be transferred to a third country for asylum processing under an international agreement unless it would be in breach of Denmark's international obligations. Importantly, asylum seekers found to be in need of international protection upon transfer would not be afforded protection in Denmark, but in the third country. Similarly, the responsibility to return rejected asylum seekers will fall on the third country.

The implementation of this change is dependent on an agreement with a third country. It will not enter into force until such a formalised agreement is in place. The Danish government reports to be in dialogue with a handful of countries, however no agreement on a transfer scheme has been reached to date. It has made explicit that Danish development aid will be used to incentivize cooperation.

2. Legal assessment

The law does not specify how the proposed model will be implemented in practice. It does not clarify questions of jurisdiction and accountability (e.g., whether asylum processing and reception centres will be managed by the Danish authorities or by the host country), it does not provide details on the situation and conditions for those recognized as refugees or the return process of those who are rejected. Similarly, it does not provide clarity regarding profiles of people that may be exempted from transfer.

The Danish Ministry for Immigration and Integration has conducted an internal [legal assessment](#) on how transferring asylum seekers to a third country for asylum processing can be done in compliance with international obligations. The legal assessment acknowledges that, in line with its international obligations, Denmark will be responsible for ensuring that anyone transferred to another country is not exposed to torture or inhuman treatment.

With some reservations the legal assessment however concludes that Denmark's obligations under international law, in particular the UN Refugee Convention and the European Convention on Human Rights (ECHR), do not prevent Denmark from concluding an agreement on the transfer of asylum seekers for asylum processing and potential subsequent protection in one or more third countries. It notes that since the proposed model has neither been tested by the European Court of Human Rights (ECtHR) nor the European Court of Justice (CJEU), the legal assessment is subject to some uncertainty.

While the Danish government repeated stated that it is prerequisite for the Danish government that an eventual agreement with a third country includes adequate guarantees of compliance in accordance with Denmark's international legal obligations, and further that such guarantees can be expected to be adhered to in practice, it has remained unable to outline how the words will become a reality.

The transfer of asylum seekers to a third country for asylum processing, refugee protection and return is not possible under EU law as it is at odds with the Treaty and the Charter for Fundamental Rights, as well as secondary legislation ensuring the right asylum. The fundamental right to asylum is also reiterated in the new pact on asylum and migration.

In 2018, the [European Commission carried out an assessment](#) and found that: “*Sending back an asylum seeker to a third country without processing their asylum claim constitutes refoulement and is not permitted under EU and international law. (...) it is not possible under EU law on returns to send someone, against their will, to a country they do not originate from or have not transited through. An agreement with a third country would be a necessary pre-condition for implementing this scenario, as is a revision of EU rules. The risk of infringing the principle of non-refoulement is high.*”

The European Commission has repeated this reply in several answers to the European Parliament after the amendments to the Danish Aliens Act (e.g. in [May 2021](#), [July 2021](#) and [September 2021](#)) with the addition that “*To the Commission’s knowledge, no such agreement is yet concluded. To assess whether the amended Act respects Denmark’s international obligations, it is necessary to also examine the content of any such agreement.*”

However, due to the Danish opt-out/derogations from EU cooperation in this area, Denmark is not bound by EU law. The legal assessment by the Danish Ministry noted that Denmark’s obligations to the EU are not considered to be an obstacle. It points to a risk for a potential exclusion from cooperation under the Dublin Regulation due the application of the model.

3. Overall feasibility

The amendment of the Danish Aliens Act is the latest of numerous attempts by Danish and other European politicians and political parties to externalise responsibility for asylum. Apart from the legal challenges stated above, it is questionable whether it is politically feasible i.e. whether Denmark will find a third country willing to agree on receiving asylum seekers from Denmark, provide them with protection if relevant or deal with the return procedure in compliance with international obligations. In the period since at least 1986 [numerous such plans](#) have failed including ones launched by countries with far greater resources and diplomatic strength than Denmark.

With which countries the alleged negotiations on this arrangement are taking place, has not been disclosed by the Danish government. In April 2021, the Minister for Immigration and Integration and the Minister for Development visited Rwanda and signed a [memorandum of understanding \(MoU\) on cooperation on asylum and migration issues](#).

[Rwanda afterwards clarified](#) that the MoU with Denmark does not include receiving asylum seekers from Denmark or processing asylum applications. Rwanda also highlighted that Denmark provides support for the evacuation of persons from Libya to the [Emergency Transit Mechanism in Gashora](#).

[Statements from the UK](#) on potential cooperation with Denmark on externalisation do not include relevant details either. Nor does the UK seem to be closer to identifying a third country to cooperate with. Both [Gibraltar](#) and [Albania](#) have ruled out the possibility last year.

4. Impact on global protection regime

UNHCR has strongly condemned the Danish plan and has [commented](#) on the initial proposal. The Agency [warned on 19 May 2021](#) against exporting asylum and called for responsibility sharing rather than shifting. In a [Note on the “Externalization” of International Protection](#) and its [Annex](#), the agency takes a clear stance against the externalisation of international protection obligations.

UN High Commissioner for Refugees, Filippo Grandi [on 3 June 2021 stated](#): “*UNHCR strongly opposes efforts that seek to externalize or outsource asylum and international protection obligations to other countries. Such efforts to evade responsibility run counter to the letter and spirit of the 1951 Refugee Convention, as well as the Global Compact on Refugees where countries agreed to share more equitably the responsibility for refugee protection*”.

The [African Union has also condemned](#) the Danish attempt to externalise asylum processing and called for increased support to the Refugee Convention and global responsibility-sharing.

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Considering the more than [80 million people](#) who are currently displaced globally and the historically small number of asylum seekers in Denmark, the move to shift responsibility for refugee protection to a third country in exchange of funding and other concessions is shameful. A model that effectively blocks access for spontaneous asylum seekers to Denmark contributes to the undermining of international cooperation on refugees. If Denmark fails to shoulder their share, there is a risk that refugee-hosting states will follow suit with potential devastating consequences for the protection of refugees.