Standards for the reception of applicants for international protection. Recast

2008/0244(COD) - 03/12/2008 - Legislative proposal

PURPOSE: recast of Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers ("the Reception Conditions Directive").

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: as announced in the Policy Plan on Asylum, this proposal is part of a first package of proposals which aim to ensure a higher degree of harmonisation and better standards of protection for the Common European Asylum System (CEAS). It is adopted at the same time as the recast of the Dublin and Eurodac Regulations. The main objective is to ensure **higher standards of treatment for asylum seekers** with regard to reception conditions that would guarantee a dignified standard of living, in line with international law. It also **harmonises national rules on reception conditions** in order to limit the phenomenon of secondary movements of asylum seekers amongst Member States, to the degree that such movements are generated from diverge national reception polices.

Scope: the scope of the directive is extended in order to include applicants for subsidiary protection. This modification is considered necessary in order to ensure consistency with the Qualification Directive which introduces the legal notion of subsidiary protection. The directive will be applicable to all types of asylum procedures and to all geographic areas and facilities hosting asylum seekers.

Access to the labour market: facilitated access to employment for asylum seekers could prevent exclusion from the host society, and encourage integration. Two measures are envisaged:

- the proposal provides that asylum seekers will be able to access employment after a period of maximum 6 months after lodging an application for international protection;

- it stipulates that the imposition of national labour market conditions shall not unduly restrict access to employment for asylum seekers.

Access to material reception conditions: in order to ensure that material reception conditions ensures a standard of living which is adequate for the health of the asylum seeker and capable of ensuring his/her subsistence, the proposal obliges Member States, when granting financial support to asylum seekers, to take into consideration the level of social assistance provided to nationals. The directive will also introduce an obligation for Member States, when allocating housing facilities, to take on board considerations of gender and age, and the situation of persons with special needs.

In order to ensure that asylum seekers are never left destitute if access to reception conditions is withdrawn or reduced, the proposal also limits the circumstances under which reception conditions could be fully withdrawn and ensures that asylum seekers will continue to benefit from access to necessary treatment of illness or mental disorders in relevant cases. Decisions on these issues will be subject to review before a national court.

The proposal furthermore, limits the circumstances where Member States could exceptionally set up modalities for material reception conditions different from those provided under the Directive.

Detention: the proposal takes as its underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection. This principle confirms the EU acquis on detention, in particular the Asylum Procedures Directive, and is in line with the Charter of Fundamental Rights and with international human rights instruments.

Detention will be allowed only in exceptional grounds prescribed under the Directive based on the Recommendation of the Committee of Ministers of the Council of Europe on measures of detention of asylum seekers and UNHCR's Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers of February 1999. Moreover, detention must be in line with the principle of necessity and proportionality, and it should be subject to an individual assessment of each case.

The proposal also guarantees that detained asylum seekers are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Particular attention is given in this respect to cases where vulnerable asylum seekers are detained. With regard to children the proposal is in line with the 1989 UN Convention on the Rights of the Child. Unaccompanied minors will never be detained. Moreover, a number of legal and procedural safeguards are provided with a view to ensuring that detention is legitimate.

Persons with special needs: the Commission has identified deficiencies in addressing special needs as being the most serious concern in the area of reception of asylum seekers. The new directive will ensure that mechanisms are established at national level with a view to identifying persons with special needs early in the asylum procedure and to guaranteeing that appropriate treatment is available. It incorporates numerous safeguards in order to ensure that reception conditions are specifically designed to meet asylum seekers' special needs. These amendments reflect several aspects of reception conditions such as access to health care, housing facilities, and education of minors.

Competent authorities: each Member State must notify the Commission of the identity of the authorities responsible for fulfilling the obligations arising under the Directive. Member States' reporting requirements and the Commission's monitoring obligations will be maintained.