

International protection: standards for the qualification and status of third country nationals or stateless persons and the content of the protection granted. Recast

2009/0164(COD) - 21/10/2009 - Legislative proposal

PURPOSE: to recast Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees in order to ensure the greater harmonisation of the measures and to remove legal uncertainties resulting from divergences in the application of certain notions used in the directive.

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

BACKGROUND: work on the creation of a Common European Asylum System (CEAS) started in May 1999, on the basis of the principles approved by the Tampere European Council. During the first phase of the CEAS (1999-2005), the goal was to harmonise Member States' legal frameworks on the basis of minimum standards. Directive 2004/83/EC, otherwise known as the 'Qualification Directive' was adopted with the purpose of defining common criteria for the identification of persons in need of international protection and to ensure that at least a minimum level of benefits is available for these persons in all Member States. It is one of the key components of five EU legislative instruments in the area of asylum adopted in the context of the first phase.

This proposal falls within the [Policy Plan on Asylum](#) which provides for the second phase of the CEAS. It aims to address the deficiencies in procedures for granting and withdrawing international protection and to ensure higher and more harmonised standards of protection, thus progressing towards a common asylum procedure and a **uniform status**.

The amendments that have been proposed are drawn from the responses received to the Commission's consultation on the [Green Paper on the future of the Common European Asylum System](#) which highlighted deficiencies concerning **the terms of the Directive** and the manner in which it is **applied in practice**. The minimum standards envisaged in 2004 are vague and ambiguous, in certain aspects, thus resulting in legal uncertainty. In view of the lack of clarity in regard to certain provisions and the incompatibility of certain standards with human rights or the applicable international law, the Commission proposes to recast the 2004 text at the same time as the [recasting of Council Directive 2005/85/EC](#) on minimum standards on procedures in Member States for granting and withdrawing refugee status ("Asylum Procedures Directive").

IMPACT ASSESSMENT: because of the variety of reasons underlying the difficulties in applying this directive, it was impossible to identify a single all-embracing option. The Commission's impact assessment thus comprises a series of **strategic options** that would: i) restrict the broad interpretations of the notions of "actors of protection" and "internal protection" so that they are more compatible with the applicable international standards (Geneva Convention and European Court of Human Rights); ii) guarantee a broader interpretation of the notion of a 'particular social group' by defining better the importance to be accorded to aspects relating to the gender of asylum seekers; iii) reduce the difference between the rights of those with subsidiary protection and of refugees by removing certain provisions that

are not justified; iv) improve the integration of beneficiaries of protection by taking into account their specific needs (e.g. assistance to find jobs, housing,); v) strengthen respect for the right to family life of beneficiaries of protection to cover minors, in the best interests of the child.

CONTENT: the proposed amendments should contribute to:

- the simplification of decision-making procedures leading to more robust determinations in the first instance, thus preventing abuse;
- the rationalisation of the procedures for the granting of rights, thus improving the efficiency of the asylum procedures and reducing secondary asylum movements resulting from the coexistence of differing national decision-making practices and legal frameworks;
- ensuring consistency with the jurisprudence with respect to human rights of the European Court of Justice and of the European Court of Human Rights.

The main proposed changes to the provisions may be summarised as follows:

a) “actors of protection”: the lack of clarity of the concept allows for wide divergences and for very broad interpretations which may fall short of the standards set by the Geneva Convention on what constitutes ‘adequate protection’. It also lays down that protection should be effective and durable and that non-state actors of protection should be willing and able to enforce the rule of law. The condition that protection should be effective and durable ensures coherence with Article 11(2) of the Directive, which requires, for the purposes of cessation, that the change of circumstances in the country of origin should be significant and of non-temporary nature;

b) internal protection: the purpose and content of international protection are not limited to *non-refoulement*. It is necessary thus to specify that it may be withheld only where protection is available in at least part of the country of origin. Moreover the proposal:

- introduces verbatim the pre-conditions set out in the above judgment for the applicability of the concept of internal protection, namely that the applicant should be able to travel, gain admittance and settle in the alternative location;
- deletes the possibility to apply the internal flight alternative;
- includes a reference to the obligation of the authorities to obtain precise and up-to-date information on the general situation in the country.

c) the "causal link" requirement: in many cases where the persecution emanates from non-State actors, such as militia, clans, criminal networks, local communities or families, the act of persecution is not committed for reasons related to a Geneva Convention ground but, for instance, with criminal motivations or for private revenge. However, it often happens in such cases that the State is unable or unwilling to provide protection to the individual concerned (for example religion, gender, ethnicity etc). To address potential protection gaps, the proposal makes explicit that the requirement of a connection between the acts of persecution and the reasons for persecution is also fulfilled where there is a connection between the acts of persecution and the absence of protection against such acts.

d) membership of a particular social group: gender as such is normally not sufficient as a criterion for the definition of a particular social group; it is generally used in combination with other factors, such as class, marital status, ethnic or clan affiliation. However, women may form a particular social group in some societies, as evidenced by discrimination in their fundamental rights. The ambiguous wording of the

last phrase of Article 10(1)(d) allows for protection gaps and for very divergent interpretations. In order to provide clear and useful guidance and ensure consistency, the amendment specifies that gender should be given due consideration for the purposes of defining a particular social group.

e) cessation of refugee and subsidiary protection status: references to the exceptions to the “ceased circumstances” cessation clauses, set out in the Geneva Convention, have been omitted from the Qualification Directive. These exceptions provide for the continuation of protection for "compelling reasons arising out of previous persecution" and are interpreted as reflecting a general humanitarian principle. The proposal introduces these exceptions with regard both to refugee status and to subsidiary protection.

f) differentiation regarding the content of the two protection statuses: an amendment expected to significantly simplify and streamline procedures and to reduce administrative costs is aimed at approximating the rights granted to the two categories of beneficiaries of protection. When subsidiary protection was introduced, it was assumed that this status was of a temporary nature. As a result, the Directive allows Member States the discretion to grant them a lower level of rights in certain respects. However, practical experience acquired so far has shown that this initial assumption was not accurate. It is thus necessary to remove any limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified. Such an approximation of rights is necessary to ensure full respect of the principle of non-discrimination and responds moreover to the call of the Hague Programme for the creation of a uniform status of protection.

g) content of protection: to ensure the effective exercise of the rights formally granted to beneficiaries of protection, it is necessary to address the specific integration challenges they face, in particular:

- **recognition of qualifications:** In order to address the practical difficulties flowing from their inability to provide documentary evidence and their limited financial capacities, the proposal encourages Member States to adopt alternative appropriate procedures and exempt them from the fees involved or grant them financial assistance, where necessary.
- **access to vocational training and employment:** beneficiaries of protection are often unable to work for years or they are unfamiliar with labour market requirements and recruitment practices. The proposal obliges Member States to offer them access to training courses to upgrade their skills and to counselling services offered by employment offices;
- **access to integration facilities:** The effective integration opportunities of beneficiaries of protection would be significantly enhanced if the different educational and professional backgrounds or other specificities of their situation were adequately taken into account in the integration facilities. The proposal requires Member States to develop in their integration policies the response that they consider appropriate to meet those specific needs;
- **access to accommodation:** Many beneficiaries of protection experience direct and indirect discrimination in the housing market. The proposal calls on Member States to put in place policies aimed at preventing discrimination and achieving equality of opportunity;
- **possibilities for reduction of benefits in cases of "manufactured" claims:** these possibilities are not conducive to integration and raise concerns from the perspective of the principle of non-discrimination. Furthermore, their limited use in practice points to their limited added value. It is thus proposed to delete these possibilities.

h) family members: the definition of family members is extended so as to take into account the case where the beneficiary of protection is a minor and the wide range of situations where a minor might be dependent, while ensuring that the decisive criterion is the best interest of the child.