

Asylum: refugee status for third-country nationals and stateless persons, minimum standards

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This report concerns the application of Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted.

The Directive is one of the building blocks of the first phase of the Common European Asylum System, called for by the European Council in its 1999 Tampere Conclusions. It is applicable to all Member States except Denmark.

The report meets the Commission's obligation under Article 37 of the Directive. It gives an overview of the transposition and implementation of the Directive by Member States and identifies possible problematic issues.

For those Member States which had not adopted the necessary transposing legislation at the time of preparation of the report, relevant information was gathered on the basis of draft legislation available at that time and fragmentary information obtained since the adoption of the transposing legislation.

Monitoring and state of transposition: Member States had to transpose the Directive by 10 October 2006. The Commission assisted the Member States in the process by holding regular meetings with national experts. Following expiry of the deadline for transposition, infringement procedures were opened against all Member States which failed to communicate or to fully communicate their transposition measures. Subsequently, in accordance with Article 226 of the Treaty, the Commission addressed **19 letters of formal notice and 13 reasoned opinions**. The decision to bring the cases before the Court of Justice was taken against 9 Member States. Five cases were withdrawn and judgments were given for 4. At present, the **Directive has been transposed by all Member States**.

Conclusion: several issues of incomplete and/or incorrect transposition of the Directive have been identified. This includes the implementation of standards lower than those established by the Directive. Deficiencies were identified in the provisions of the directive themselves, the vagueness and ambiguity of several concepts such as actors of protection, internal protection, membership of a particular social group leaving room for widely divergent interpretations by the Member States. Thus, **important disparities subsist among Member States in the granting of protection and the form of the protection granted**. Furthermore, an important share of decisions at first instance based on criteria which are insufficiently clear and precise are overturned on appeal.

The evaluation of the implementation of the Directive shows that in practice few Member States make use of the possibility to differentiate between refugees and beneficiaries of subsidiary protection in terms of the content of the protection granted. On the other hand, the level of protection granted in different Member States differs, which affects asylum flows and is a cause of secondary movements.

The present report shows that the objective of creating a level playing field with respect to the qualification and status of beneficiaries of international protection and to the content of the protection granted has not been fully achieved during the first phase of harmonization.

The Commission will continue to examine and pursue all cases where problems of transposition and/or implementation were identified, so as to ensure the correct application of the common standards set by the Directive in particular with regard to the full respect of the rights laid down in the EU Charter of Fundamental Rights as well as to reduce the scope for divergences. The divergences in the implementation by Member States of the Directive which are due to the vagueness and the ambiguity of the standards themselves could only be addressed by the legislative amendment of the relevant provisions. On the basis of a thorough evaluation of the implementation of the Directive, the Commission adopted on 21 October 2009 a proposal to [recast the Qualification Directive](#) in order to remedy to the deficiencies identified.