

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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drafted by Jean LAMBERT (Greens/EFA, UK) on the proposal for a directive of the European Parliament and of the Council 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 (recast).

It recommended that the European Parliament's position at first reading adopted under the ordinary legislative procedure should be to amend the Commission proposal. The amendments proposed are the result of an agreement reached between the members of the committee responsible and the representatives of the Member States. They may be summarised as follows:

Definition of "family members": the amended text accepts the Commission's definition, that being:

- the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third country nationals;
- the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are **unmarried** and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
- the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the national practice of the Member State concerned, when the latter is a minor and unmarried.

The definition does not, as proposed by the Commission, include "**married minors**". The extension of the definition of family proved unacceptable to the Council. Some Member States consider the need to maintain a very narrow definition of family, fearing future claims for family reunification, although that Directive clearly states the rules to refugees.

A new recital stipulates that in exceptional circumstances, where the close relative of the beneficiary of international protection is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with his or her original family.

Best interests of the child: in assessing the best interests of the child, Member States should in particular take due account of the principle of **family unity**, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his/her age and maturity. A recital states that when deciding on entitlements to the benefits included in this Directive, Member States should take due account of the best interests of the child as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of beneficiaries of international protection.

Actors of protection: protection against persecution or serious harm can only be provided by:

- the State; or
- parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State provided these are willing and able to offer protection in accordance with the proposed Directive.

This protection must be effective and of a **non-temporary nature**.

Internal protection: Member States may determine that an applicant is **not in need of international protection** if in a part of the country of origin, he or she:

- has no well-founded fear of being persecuted, or is not at real risk of suffering serious harm, or
- has access to protection against persecution or serious harm, and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin, Member States shall at the time of taking the decision on the application have regard to the **general circumstances prevailing in that part of the country and to the personal circumstances of the applicant**. To this end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as UNHCR and EASO.

Persecution ground and sexual orientation: the amended text stipulates that it is equally necessary to introduce a **common concept of the persecution ground** "membership of a particular social group". For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation, forced abortion, should be given due consideration insofar as they are related to the applicant's well-founded fear of persecution.

Residence permits: the amended text states that, as soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status and their family members a renewable residence permit which must be **valid for at least one year** and, in case of renewal, at least two years, unless compelling reasons of national security or public order otherwise require.

Social assistance: in accordance with the proposed text, it is appropriate, for beneficiaries of international protection, to provide without discrimination in the context of social assistance the adequate social welfare and means of subsistence. The modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting the benefits for beneficiaries of subsidiary protection status to **core benefits** is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy and parental assistance, insofar as they are granted to nationals according to the legislation of the Member State concerned.

Reports: lastly, the amended text stipulates that the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary by 42 months from the date of publication in the Official Journal of the European Union. These proposals for amendment shall be made by way of priority in Articles 2 (Definitions) and Article 7 (Actors of protection).