

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) - 27/10/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 476 votes to 24, with 73 abstentions, a legislative resolution 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).

The legislative resolution is accompanied by a Joint Political Declaration of the European Parliament, the Council and the Commission on explanatory documents (these are supplementary documents that shall be sent to the Commission, if necessary, to highlight the transposition measures of the Directive into national law).

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal 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.

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
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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**. Such protection is generally provided when the actors take reasonable steps to prevent the persecution or suffering of serious harm, inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.

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: 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).

Transposition: Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Articles of this Directive by 2 years after its entry into force.

Joint Political Declaration of the European Parliament, the Council and the Commission on explanatory documents: in accordance with the Court of Justice of 16 July 2009 in case C-427/07, point 107, the institutions acknowledge that the information Member States supply to the Commission as regards the transposition of directives in national law must be clear and precise, in order to facilitate the achievement by the Commission of its task of overseeing the application of Union law. Against this background, the European Parliament and the Council welcome the Joint Political Declaration of Member States and the Commission on explanatory documents. The institutions agree to include the following recital in the directive concerned: “In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified”.

In this context, Member States acknowledge that the information they supply to the Commission as regards the transposition of directives in national law must indicate unequivocally the laws, regulations and administrative provisions, or any other provisions of national law, as well as, where relevant, the jurisprudence of national courts, by means of which the Member States consider that they have satisfied the various requirements imposed on them by the directive. Member States undertake to accompany, in justified cases, the notification of transposition measures with one or more explanatory documents, which can take the form of correlation tables or other documents serving the same purpose.