

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) - 13/12/2011 - Final act

PURPOSE: recast of [Directive 2004/83/EC](#) on standards for the qualification for asylum (“Qualification Directive”) in the framework of establishing a common policy on asylum by 2012 at the latest.

LEGISLATIVE ACT: Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast.)

BACKGROUND: the European Council of 4 November 2004 adopted the Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. The Hague Programme invited the Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and the Council, with a view to their adoption before the end of 2010.

The Commission considered that a number of substantive changes should be made to Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection.

At the same time, in the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status for those granted international protection, by 2012 at the latest.

The recast of the Qualification Directive will be the first in a package of five legal instruments to be adopted for the creation of the Common European Asylum System (CEAS).

The other instruments are :

- the [Asylum Procedures Directive](#)
- the [Reception Conditions Directive](#)
- the [Dublin II Regulation](#), which determines which Member State is responsible for examining the asylum application;
- the [Eurodac Regulation](#), which establishes a system for digital fingerprint comparison in order to apply the Dublin II Regulation.

The main goal of the CEAS is greater harmonisation of national asylum systems and higher levels of protection for applicants for international protection.

Accordingly, it is necessary to amend the 2004 Directive.

CONTENT: following an agreement in first reading, the European Parliament and the Council adopted amendments to the Qualifications Directive.

Main purpose: the main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.

Scope: the Directive sets standards for the identification of people in need of international protection in the EU either as refugees or as beneficiaries of subsidiary protection.

“Refugee” and “person eligible for subsidiary protection” are defined in the text.

Overall, the amendments clarify several legal concepts used to define the grounds for protection thereby ensuring coherence with the case-law of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR).

The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks.

Rights under the Directive: the Directive ensures a **minimum level of benefits and rights** for both categories of beneficiaries of international protection throughout the EU. Although differences continue to exist between the two categories, the new Directive approximates the benefits and rights of refugees and of beneficiaries of subsidiary protection offering, in some fields, higher protection standards as in the previous text. The new rules also strengthen the rights of beneficiaries of international protection by taking into account the specific integration challenges they face. Member States that wish to do so can provide for more favourable rules for beneficiaries of international protection.

Best interests of the child: the Directive stipulates that the ‘best interests of the child’ should be a primary consideration of Member States. When assessing the situation of a minor under the age of 18, Member States must bear in mind 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 or her age and maturity. They must also take account 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 that beneficiary.

New elements of the Directive: the main new elements of the amended Qualification Directive include:

- **clarification of the legal concepts** of "actors of protection", "internal protection" and "membership of a particular social group" which enable Member States to identify more quickly the persons in need of protection, to make more robust decisions at first instance and to prevent better abuse of the asylum system;
- an **enlarged family definition** which, in the future, will cover not only the spouse or unmarried partner as well as unmarried children, but also any other adult legally responsible for an unmarried minor who applies for asylum;
- **approximation of the rights** of refugees and beneficiaries of subsidiary protection with regard to family unity, access to employment and health care while allowing Member States to continue differentiation between these two protection statuses as regards the residence permit as well as access to social welfare and integration facilities;

- **access to healthcare:** Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted protection, adequate healthcare, including treatment of mental disorders when needed, to beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict;
- **better access to employment related education** opportunities and vocational training as well as to procedures for recognition of professional qualifications.
- **duration of the residence permit:** while the rules continue to allow Member States to differentiate between refugees and beneficiaries of subsidiary protection, they do enhance the rights of the latter: any renewal of the residence permit after the initial validity of one year must be valid for at least two years. The rules for refugees remain unchanged, i.e. their residence permit must be valid for at least three years and must be renewable;
- improved conditions for access to accommodation and integration facilities;
- better standards for vulnerable persons with special needs such as unaccompanied minors.

Reports: by 21 June 2015, the Commission shall report to the European Parliament and the Council on the application of this Directive and propose any amendments that are necessary. Those proposals for amendment shall be made by way of priority in Articles 2 (definitions, particular with regard to minors who are married) and 7 (actors of protection.). The Commission must report on the application of the Directive at least every 5 years.

ENTRY INTO FORCE: 09/01/2012.

TRANSPOSITION: most of the new provisions in the Directive must be transposed by 21 December 2013.