


# Procedure file

Basic information		
CNS - Consultation procedure Directive	<a href="#">2001/0207(CNS)</a>	Procedure completed
Asylum: refugee status for third-country nationals and stateless persons, minimum standards		
Repealed by <a href="#">2009/0164(COD)</a>		
Subject 7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF)		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs	V/ALE <a href="#">LAMBERT Jean</a>	21/11/2001
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>AFET</b> Foreign Affairs, Human Rights, Common Security, Defense	The committee decided not to give an opinion.	
	<b>BUDG</b> Budgets		
	<b>JURI</b> Legal Affairs and Internal Market	The committee decided not to give an opinion.	
	<b>EMPL</b> Employment and Social Affairs	The committee decided not to give an opinion.	
	<b>FEMM</b> Women's Rights and Equal Opportunities	PSE <a href="#">ZRIHEN Olga</a>	26/02/2002
<b>PETI</b> Petitions	GUE/NGL <a href="#">GONZÁLEZ ÁLVAREZ Laura</a>	22/11/2001	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2579</a>	29/04/2004
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2514</a>	05/06/2003
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2504</a>	08/05/2003
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2489</a>	27/02/2003
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2469</a>	28/11/2002
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2455</a>	14/10/2002
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>		

Key events
------------

12/09/2001	Legislative proposal published	COM(2001)0510	Summary
28/11/2001	Committee referral announced in Parliament		
02/10/2002	Vote in committee		Summary
02/10/2002	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0333/2002</a>	
14/10/2002	Debate in Council	<a href="#">2455</a>	
21/10/2002	Debate in Parliament		Summary
22/10/2002	Decision by Parliament	<a href="#">T5-0494/2002</a>	Summary
27/02/2003	Debate in Council	<a href="#">2489</a>	Summary
08/05/2003	Debate in Council	<a href="#">2504</a>	
05/06/2003	Debate in Council	<a href="#">2514</a>	Summary
29/04/2004	Act adopted by Council after consultation of Parliament		
29/04/2004	End of procedure in Parliament		
30/09/2004	Final act published in Official Journal		

### Technical information

Procedure reference	2001/0207(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealed by <a href="#">2009/0164(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 063-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/15383

### Documentation gateway

Legislative proposal	COM(2001)0510 OJ C 051 26.02.2002, p. 0325 E	12/09/2001	EC	Summary
Committee of the Regions: opinion	<a href="#">CDR0093/2002</a> <a href="#">OJ C 278 14.11.2002, p. 0044</a>	16/05/2002	CofR	
Economic and Social Committee: opinion, report	<a href="#">CES0683/2002</a> <a href="#">OJ C 221 17.09.2002, p. 0043</a>	29/05/2002	ESC	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0333/2002</a>	02/10/2002	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0494/2002</a> <a href="#">OJ C 300 11.12.2003, p. 0025-0134 E</a>	22/10/2002	EP	Summary
Follow-up document	<a href="#">COM(2010)0314</a>	16/06/2010	EC	Summary

## Additional information

European Commission

[EUR-Lex](#)

## Final act

[Directive 2004/83](#)  
[OJ L 304 30.09.2004, p. 0012-0023](#) Summary

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

**PURPOSE** : to provide a framework for an international protection regime based on minimum standards for qualification as refugees and those in need of subsidiary protection. **CONTENT** : This proposal has the following aims: - implementing the Vienna Action Plan and the conclusions of the Tampere European Council. - setting out minimum standards on the qualification and status of applicants for international protection as refugees or beneficiaries of subsidiary protection status. - ensuring that a minimum level of protection is available in all Member States for those genuinely in need and to reduce disparities between Member States' legislation and practice in these areas as the first full step towards harmonisation. - limiting secondary movements of applicants influenced solely by the diversity of applicable rules - preventing abuses of the asylum system. The main points of the legislation are: - general rules on how to determine whether a claim for international protection is well founded or not. - rules specific to the qualification as a refugee. These focus in particular on the definition of "persecution". There are also rules laying down the circumstances when refugee status may be withdrawn. - a framework for identifying three categories of applicants for international protection who do not qualify as refugees but are available for the status of subsidiary protection. - minimum obligations that a Member State shall have towards those to whom it grants international protection, (such as residence permits, access to education and health care). These obligations include the duration and content of the status flowing from recognition as a refugee or as a beneficiary of subsidiary protection status. - the establishment of national contact points in Member States to ensure the directives implementation. Member States are also required to take appropriate measures to establish direct Cooperation, including the exchange of visits, and an exchange of information between the competent authorities. The following are noteworthy: - the introduction of common concepts of: protection needs arising sur place, sources of harm and protection, internal protection; and persecution. This latter includes the five grounds on which persecution can be predicated, based on the Geneva Convention. There is a definition of the term "membership of a particular social group". - except under certain defined conditions, Member States must ensure that accompanying family members are entitled to the same status as the applicant for international protection.. - when assessing minors for international protection, Member States should have regard to child-specific forms of persecution such as recruitment into armies, trafficking for sex work, and forced labour.?

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

The committee adopted the report by Jean LAMBERT (Greens/EFA, UK) tabling a large number of amendments to the proposal (consultation procedure) aimed at putting applicants for subsidiary protection on a more equal footing with refugee status applicants and providing for better guarantees and integration opportunities. The main amendments were as follows: - a clearer definition of when refugee status might be refused on the grounds that applicants could find protection in another part of their country of origin ('internal flight alternative'); - deletion of the possibility of refusing refugee status if an applicant is receiving protection or assistance from UN agencies other than the UNHCR; - 'state protection' should not be regarded as being provided by international organisations and stable quasi-state authorities who control a region; - asylum seekers should qualify for refugee or temporary protection status where they have a valid fear of persecution not only in their country of origin but also in their country of residence; - when assessing fear of persecution, factors such as sex, gender identity, sexual orientation and health status (e.g. being HIV positive or having AIDS) should be taken into account, as well as customs which condone the applicant's persecution. Where applicants make contradictory statements, the authorities should take account of the fact that this may be the result of the traumatic experiences they have undergone; - family members of an applicant who may qualify for international protection should include same-sex partners and children of the applicant's spouse or partner. Moreover, they need not arrive in the host country at the same time as the applicant, but may join them later. In order to be considered as dependent relatives, they need not have lived together with the applicant in the country of origin; - subsidiary protection should be granted if there is a risk not only of being tortured but also of capital punishment or genital mutilation; a residence permit under subsidiary protection should be granted for a period of at least five years (the same as for refugees); - those enjoying subsidiary protection should be treated on a more equal footing with refugees, for example as regards the issue of travel documents, permission to work, and opportunities to learn the language, to receive vocational training, to have child care or to benefit from specific support programmes. These opportunities should be provided as soon as their status is granted; - suspicions that an applicant has committed war crimes etc., should not suffice for the purposes of exclusion from refugee status; instead, there must be certainty. However, refugee status should not be granted to people against whom a European arrest warrant has been issued or who have committed terrorist offences; - revocation of a residence permit because a refugee can again make use of the protection of his country of nationality or can no longer refuse to obtain protection in his country should be preceded by a notification period of at least 6 months. However, in deciding whether to revoke a residence permit, account should be taken of ties established in the host country and of possible reasons arising out of previous persecution for not being able to return.?

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

During the debate which preceded the adoption of the report drafted by Mrs J LAMBERT, Commissioner Antonio VITORINO defended the stance according to which applicants for subsidiary protection are put on a more equal footing with refugee status applicants and providing for better guarantees and integration opportunities. In fact, in all the Member States, a majority of asylum seekers needing international protection are not covered by the Geneva Convention but rather by international agreements on subsidiary protection. If this issue does not enter into the scope of the Directive, there will be a continuity of undesirable practices. The Commissioner was, however, reticent to accept the inclusion of

new principles and definitions concerning the granting of asylum. He believes that new provisions would undermine the Geneva Convention. In addition, the Parliament's proposals relating to more generous guarantees should be covered other Directives. ?

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

---

The European Parliament adopted a resolution based on the draft by Jean Lambert (Greens/EFA, UK) on minimum standards for refugees. (Please refer to the document dated 02/10/02.) In addition, Parliament made the following amendments: -Member States must provide for a system of penalties in the event of violation of the national provisions adopted by virtue of the Directive; -a new recital states that it is necessary to be vigilant with regard to the interpretation of the Directive. In particular, it is important not to give rise to regional interpretations of the Geneva Convention which in the end would be more restrictive than the interpretation currently given by the Member States; -applicants for asylum must be provided with all the necessary information. Member States must take special care to inform the members of a single family that they may submit separate applications for asylum; -the criteria for an internal flight alternative are specified; -the decision of cessation of refugee status will be notified in writing. The notification must indicate the means of appeal open to the person concerned and the time limits within which he can take such action; -as far as subsidiary protection is concerned, the onus is on the Member State to prove that a person no longer needs international protection for one of the prescribed reasons; -there must be a right of appeal against the decision to withdraw subsidiary protection status; -a residence permit for a person with subsidiary protection status must be valid for at least five years and automatically renewable; -the date for transposition is changed to 30 June 2003, instead of 30 April 2004.?

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

---

The Council examined some Articles of this proposal (Articles 20 to 38) relating in particular to the minimum obligations that Member States shall have to those whom they grant international protection. The Council instructed its relevant bodies to further examine the proposal with a view to reaching a political agreement within the time limit decided by the Seville European Council (June 2003). The purpose of the proposal is to provide a framework for an international protection regime, based on existing international and Community obligations and current Member States practice, and separated into the two complementary categories of refugee and subsidiary protection. The proposal includes provisions on the minimum rights and benefits to be enjoyed by the beneficiaries of refugee status and of subsidiary protection status. It is recalled that at its meeting on 28 November 2002, the Council reached agreement, pending some parliamentary reservations and reservations from one delegation, on the provisions which concern the rules on the recognition of a third country national as a refugee or as a person eligible for subsidiary protection (Articles 1 to 19). Discussions in the Council bodies have shown that the rights to be granted to beneficiaries of refugee status are widely uncontested, while divergences persist concerning the level of the rights to be granted to the beneficiaries of subsidiary protection status.?

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

---

The Council reached agreement on certain provisions of the amended proposal Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, in particular those concerning the detention of asylum seekers and the procedure to be followed in case of implicit withdrawal or abandonment of an application for asylum. The Council instructed the Permanent Representatives Committee to further examine the Directive with a view to reaching an agreement within the time limit decided by the Seville European Council (end 2003). According to the agreement, Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum. Where an applicant for asylum is held in detention, Member States shall ensure that there is the possibility of speedy judicial review. Furthermore, and concerning the procedure in case of implicit withdrawal or abandonment of an application for asylum, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or to reject the application on the basis that the applicant has not established an entitlement to refugee status. The Council and the Commission also took note of the statements presented by several Member States concerning the establishment of a common minimal list of safe countries of origin.?

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

---

**PURPOSE :** to provide a framework for an international protection regime based on minimum standards for qualification as refugees and those in need of subsidiary protection

**LEGISLATIVE ACT :** 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 and the content of the protection granted.

**CONTENT :** This Directive comes about as the result of the Tampere conclusions, which provided that a Common European Asylum System must include the approximation of rules on the recognition of refugees and the content of refugee status. The Tampere conclusions also provided that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

This Directive ensures that Member States apply common criteria for the identification of persons genuinely in need of international protection, and that a minimum level of benefits is available for these persons in all Member States. The main points are as follows:

- minimum standards for the definition and content of refugee status are laid down to guide the competent national bodies of Member States in the application of the Geneva Convention;
- the Directive introduces common concepts of protection needs arising sur place; sources of harm and protection; internal protection; and persecution, including the reasons for persecution;
- when assessing applications from minors for international protection, Member States must have regard to child-specific forms of persecution;

- the best interests of the child will be a primary consideration of Member States when implementing the Directive.
- the Directive introduces a common concept of the persecution ground "membership of a particular social group" ;
- minimum standards for the definition and content of subsidiary protection status are laid down. The directive defines criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection;
- risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm;
- within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit;
- with regard to social assistance and health care, 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, in so far as they are granted to nationals according to the legislation of the Member State concerned;
- access to health care, including both physical and mental health care, must be ensured to beneficiaries of refugee or subsidiary protection status.

Lastly, it should be noted that Ireland will take part in the adoption of the Directive.

DATE OF TRANSPOSITION : 10/10/2006.

ENTRY INTO FORCE : 20/10/2004.

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

---

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.