

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2009/0164(COD) Procedure completed
International protection: standards for the qualification and status of third country nationals or stateless persons and the content of the protection granted. Recast	
Repealing Directive 2004/83/EC 2001/0207(CNS)	
Subject 7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF)	

Key players				
European Parliament	Committee responsible	Rapporteur	Appointed	
	LIBE Civil Liberties, Justice and Home Affairs		11/01/2010	
		Vers/ALE LAMBERT Jean		
		Shadow rapporteur		
		PPE HOHLMEIER Monika		
		S&D ROMERO LÓPEZ Carmen		
		ALDE HIRSCH Nadja		
		ECR KIRKHOPE Timothy		
	Committee for opinion	Rapporteur for opinion	Appointed	
	JURI Legal Affairs		02/09/2009	
		S&D GERINGER DE OEDENBERG Lidia Joanna		
Council of the European Union	Council configuration	Meeting	Date	
	Transport, Telecommunications and Energy	3127	24/11/2011	
	Justice and Home Affairs (JHA)	3121	27/10/2011	
	Justice and Home Affairs (JHA)	3111	22/09/2011	
	Justice and Home Affairs (JHA)	3043	08/11/2010	
	Justice and Home Affairs (JHA)	3034	07/10/2010	
	Justice and Home Affairs (JHA)	2979	30/11/2009	
European Commission	Commission DG	Commissioner		
	Justice and Consumers	MALMSTRÖM Cecilia		

Key events			
21/10/2009	Legislative proposal published	COM(2009)0551	Summary

12/11/2009	Committee referral announced in Parliament, 1st reading		
30/11/2009	Debate in Council	2979	Summary
07/10/2010	Debate in Council	3034	Summary
08/11/2010	Debate in Council	3043	Summary
12/07/2011	Vote in committee, 1st reading		Summary
14/07/2011	Committee report tabled for plenary, 1st reading	A7-0271/2011	
22/09/2011	Debate in Council	3111	Summary
26/10/2011	Debate in Parliament		
27/10/2011	Results of vote in Parliament		
27/10/2011	Debate in Council	3121	Summary
27/10/2011	Decision by Parliament, 1st reading	T7-0469/2011	Summary
24/11/2011	Act adopted by Council after Parliament's 1st reading		
13/12/2011	Final act signed		
13/12/2011	End of procedure in Parliament		
20/12/2011	Final act published in Official Journal		

Technical information

Procedure reference	2009/0164(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
	Repealing Directive 2004/83/EC 2001/0207(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 078-p2
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/01495

Documentation gateway

Document attached to the procedure	SEC(2009)1373	21/10/2009	EC	
Document attached to the procedure	SEC(2009)1374	21/10/2009	EC	
Legislative proposal	COM(2009)0551	21/10/2009	EC	Summary
Committee draft report	PE448.996	28/09/2010	EP	
Amendments tabled in committee	PE452.552	27/10/2010	EP	
Amendments tabled in committee	PE469.705	30/06/2011	EP	

Committee report tabled for plenary, 1st reading/single reading	A7-0271/2011	14/07/2011	EP	
Text adopted by Parliament, 1st reading/single reading	T7-0469/2011	27/10/2011	EP	Summary
Commission response to text adopted in plenary	SP(2011)8697	30/11/2011	EC	
Draft final act	00050/2011/LEX	14/12/2011	CSL	

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

Final act
Directive 2011/95 OJ L 337 20.12.2011, p. 0009 Summary

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

PURPOSE: to recast Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees in order to ensure the greater harmonisation of the measures and to remove legal uncertainties resulting from divergences in the application of certain notions used in the directive.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: work on the creation of a Common European Asylum System (CEAS) started in May 1999, on the basis of the principles approved by the Tampere European Council. During the first phase of the CEAS (1999-2005), the goal was to harmonise Member States' legal frameworks on the basis of minimum standards. Directive 2004/83/EC, otherwise known as the 'Qualification Directive' was adopted with the purpose of defining common criteria for the identification of persons in need of international protection and to ensure that at least a minimum level of benefits is available for these persons in all Member States. It is one of the key components of five EU legislative instruments in the area of asylum adopted in the context of the first phase.

This proposal falls within the [Policy Plan on Asylum](#) which provides for the second phase of the CEAS. It aims to address the deficiencies in procedures for granting and withdrawing international protection and to ensure higher and more harmonised standards of protection, thus progressing towards a common asylum procedure and a uniform status.

The amendments that have been proposed are drawn from the responses received to the Commission's consultation on the [Green Paper on the future of the Common European Asylum System](#) which highlighted deficiencies concerning the terms of the Directive and the manner in which it is applied in practice. The minimum standards envisaged in 2004 are vague and ambiguous, in certain aspects, thus resulting in legal uncertainty. In view of the lack of clarity in regard to certain provisions and the incompatibility of certain standards with human rights or the applicable international law, the Commission proposes to recast the 2004 text at the same time as the [recasting of Council Directive 2005/85/EC](#) on minimum standards on procedures in Member States for granting and withdrawing refugee status ('Asylum Procedures Directive').

IMPACT ASSESSMENT: because of the variety of reasons underlying the difficulties in applying this directive, it was impossible to identify a single all-embracing option. The Commission's impact assessment thus comprises a series of strategic options that would: i) restrict the broad interpretations of the notions of 'actors of protection' and 'internal protection' so that they are more compatible with the applicable international standards (Geneva Convention and European Court of Human Rights); ii) guarantee a broader interpretation of the notion of a 'particular social group' by defining better the importance to be accorded to aspects relating to the gender of asylum seekers; iii) reduce the difference between the rights of those with subsidiary protection and of refugees by removing certain provisions that are not justified; iv) improve the integration of beneficiaries of protection by taking into account their specific needs (e.g. assistance to find jobs, housing,); v) strengthen respect for the right to family life of beneficiaries of protection to cover minors, in the best interests of the child.

CONTENT: the proposed amendments should contribute to:

- the simplification of decision-making procedures leading to more robust determinations in the first instance, thus preventing abuse;
- the rationalisation of the procedures for the granting of rights, thus improving the efficiency of the asylum procedures and reducing secondary asylum movements resulting from the coexistence of differing national decision-making practices and legal frameworks;
- ensuring consistency with the jurisprudence with respect to human rights of the European Court of Justice and of the European Court of Human Rights.

The main proposed changes to the provisions may be summarised as follows:

a) 'actors of protection': the lack of clarity of the concept allows for wide divergences and for very broad interpretations which may fall short of the standards set by the Geneva Convention on what constitutes 'adequate protection'. It also lays down that protection should be effective

and durable and that non-state actors of protection should be willing and able to enforce the rule of law. The condition that protection should be effective and durable ensures coherence with Article 11(2) of the Directive, which requires, for the purposes of cessation, that the change of circumstances in the country of origin should be significant and of non-temporary nature;

b) internal protection: the purpose and content of international protection are not limited to non-refoulement. It is necessary thus to specify that it may be withheld only where protection is available in at least part of the country of origin. Moreover the proposal:

- introduces verbatim the pre-conditions set out in the above judgment for the applicability of the concept of internal protection, namely that the applicant should be able to travel, gain admittance and settle in the alternative location;
- deletes the possibility to apply the internal flight alternative;
- includes a reference to the obligation of the authorities to obtain precise and up-to-date information on the general situation in the country.

c) the "causal link" requirement: in many cases where the persecution emanates from non-State actors, such as militia, clans, criminal networks, local communities or families, the act of persecution is not committed for reasons related to a Geneva Convention ground but, for instance, with criminal motivations or for private revenge. However, it often happens in such cases that the State is unable or unwilling to provide protection to the individual concerned (for example religion, gender, ethnicity etc). To address potential protection gaps, the proposal makes explicit that the requirement of a connection between the acts of persecution and the reasons for persecution is also fulfilled where there is a connection between the acts of persecution and the absence of protection against such acts.

d) membership of a particular social group: gender as such is normally not sufficient as a criterion for the definition of a particular social group; it is generally used in combination with other factors, such as class, marital status, ethnic or clan affiliation. However, women may form a particular social group in some societies, as evidenced by discrimination in their fundamental rights. The ambiguous wording of the last phrase of Article 10(1)(d) allows for protection gaps and for very divergent interpretations. In order to provide clear and useful guidance and ensure consistency, the amendment specifies that gender should be given due consideration for the purposes of defining a particular social group.

e) cessation of refugee and subsidiary protection status: references to the exceptions to the "ceased circumstances" cessation clauses, set out in the Geneva Convention, have been omitted from the Qualification Directive. These exceptions provide for the continuation of protection for "compelling reasons arising out of previous persecution" and are interpreted as reflecting a general humanitarian principle. The proposal introduces these exceptions with regard both to refugee status and to subsidiary protection.

f) differentiation regarding the content of the two protection statuses: an amendment expected to significantly simplify and streamline procedures and to reduce administrative costs is aimed at approximating the rights granted to the two categories of beneficiaries of protection. When subsidiary protection was introduced, it was assumed that this status was of a temporary nature. As a result, the Directive allows Member States the discretion to grant them a lower level of rights in certain respects. However, practical experience acquired so far has shown that this initial assumption was not accurate. It is thus necessary to remove any limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified. Such an approximation of rights is necessary to ensure full respect of the principle of non-discrimination and responds moreover to the call of the Hague Programme for the creation of a uniform status of protection.

g) content of protection: to ensure the effective exercise of the rights formally granted to beneficiaries of protection, it is necessary to address the specific integration challenges they face, in particular:

- recognition of qualifications: In order to address the practical difficulties flowing from their inability to provide documentary evidence and their limited financial capacities, the proposal encourages Member States to adopt alternative appropriate procedures and exempt them from the fees involved or grant them financial assistance, where necessary.
- access to vocational training and employment: beneficiaries of protection are often unable to work for years or they are unfamiliar with labour market requirements and recruitment practices. The proposal obliges Member States to offer them access to training courses to upgrade their skills and to counselling services offered by employment offices;
- access to integration facilities: The effective integration opportunities of beneficiaries of protection would be significantly enhanced if the different educational and professional backgrounds or other specificities of their situation were adequately taken into account in the integration facilities. The proposal requires Member States to develop in their integration policies the response that they consider appropriate to meet those specific needs;
- access to accommodation: Many beneficiaries of protection experience direct and indirect discrimination in the housing market. The proposal calls on Member States to put in place policies aimed at preventing discrimination and achieving equality of opportunity;
- possibilities for reduction of benefits in cases of "manufactured" claims: these possibilities are not conducive to integration and raise concerns from the perspective of the principle of non-discrimination. Furthermore, their limited use in practice points to their limited added value. It is thus proposed to delete these possibilities.

h) family members: the definition of family members is extended so as to take into account the case where the beneficiary of protection is a minor and the wide range of situations where a minor might be dependent, while ensuring that the decisive criterion is the best interest of the child.

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

In the context of the discussions on the Common European Asylum System (CEAS), ministers held a first exchange of views on two recent Commission proposals:

- [a directive 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](#); and
- a directive on minimum standards on procedures in member states for granting and withdrawing international protection.

The Presidency concluded that the discussion highlighted a number of issues which will need to be addressed in the coming negotiations within the Council and with the European Parliament. These negotiations will be guided by the following principles: more efficiency, greater cost effectiveness and a high level of protection.

The two proposals for amending the directives tabled by the Commission in October 2009 aim to offer a higher degree of protection to victims of persecutions and to improve the coherence between EU asylum instruments. They are also meant to simplify and consolidate procedural standards, thus preventing fraud and improving the efficiency of the asylum process.

The CEAS was launched in the conclusions of the European Council of Tampere in 1999. In October 2008, the European Council adopted the European Pact on Immigration and Asylum and confirmed its commitment to complete the CEAS by 2012. Besides the EASO/ERF and the two most recent directive proposals mentioned above, the following legislative initiatives form part of the CEAS:

- [the reception conditions directive](#),
- [the so-called Dublin II regulation](#), determining the member state responsible for examining an asylum application,
- [the EURODAC regulation](#), establishing a system of comparing fingerprints in order to effectively implement the Dublin system,
- [an amendment to the ERF](#) relating to the establishment of a joint EU resettlement programme.

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

Ministers discussed the state-of-play regarding the establishment of a Common European Asylum System (CEAS). The CEAS includes a package of six legislative proposals which EU member states have undertaken to adopt by 2012.

The basis for the discussion was a presidency report that gave an overview of the debate after an informal meeting of the Justice and Home Affairs Ministers on 15 and 16 July and a ministerial conference on 13 and 14 September 2010 in Brussels.

Member states highlighted a number of issues of particular concern to them including the need to combine a high level of protection with efficient and effective asylum systems, solidarity and changes to the Dublin II system. The current text of the Dublin II regulation states that the member states through which an asylum seeker first entered the territory of the EU are responsible for dealing with that person's request for asylum.

Malta, Greece and Cyprus, for example, repeated their call for solidarity and support from the European Commission and other member states to help them cope with the large number of asylum requests with which they are confronted. The Dublin II regulation should, in their opinion, be reformed.

Other member states, including Germany and Austria, maintained that the proper functioning of the Dublin II regulation was at the heart of any possible future Common European Asylum System. These countries and others, like the UK, also stressed the importance for more cooperation with third countries on issues such as readmission agreements and border controls. They also stressed that they were ready to provide practical support and cooperation in order to help those member states struggling with a greater burden to implement existing legislation. The European Asylum Support Office (EASO), which is expected to be operational early in 2011, is expected to play an important role in this respect.

In the context of this debate, the Commission also informed the Council of its recent missions to Greece where it discussed with Greek political leaders the reform of their asylum system. Greece has recently adopted a national action plan on asylum reform and migration management in response to significant increases in the number of illegal immigrants and asylum seekers. Member states confirmed their readiness to assist in the implementation of the plan.

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

Ministers continued work on the establishment of a Common European Asylum System (CEAS) on the basis of a discussion paper which presents the state of play in relation to the discussions regarding a package of six legislative proposals which EU Member States have committed to adopt by 2012.

It relates to the following proposals:

- [the proposal for the extension of the Long-Term Residents Directive to beneficiaries of international protection](#);
- this proposal for the recast of the 'Qualification' Directive;
- [the recast of the EURODAC Regulation](#);
- [the recast of the 'Dublin' Regulation](#);
- [the establishment of a European Asylum Support Office \(EASO\)](#);
- [the amendment of Decision No 573/2007/EC](#) establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions (already adopted).

As regards the proposal for the recast of the 'Qualification' Directive, the discussion document indicates that the Spanish Presidency had done excellent work on this and that the current Belgian Presidency was able to finalize the technical deliberations on this proposal at the Asylum Working Party on 20-21 October. At the SCIFA (Strategic Committee on Immigration, Frontiers and Asylum) meeting on 22 October, the two main open issues were discussed, namely:

- the definition of family members and
- the modalities and extent of approximation of the statuses of refugees and beneficiaries of subsidiary protection.

On the basis of the outcome of this debate, the Presidency aims at further defining the position of Council during the coming weeks, in view of

engaging, by the end of November, in first informal contacts with the Parliament. The rapporteur presented her draft report in the LIBE Committee on 11 October. This way forward should allow for a swift agreement in first reading.

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

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).

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

The Council discussed the state of play of negotiations on the asylum package on the basis of two presidency papers taking into account the commitment to set up the CEAS by 2012.

Particular attention was given to possible ways to move forward in negotiations on the Dublin regulation based on the concept of an early warning and preparedness process, in the form of an 'asylum evaluation mechanism'. Such an evaluation mechanism could be used as a tool for the prevention of asylum crises and could be set up in parallel to the 'emergency mechanism' so far included in the Commission proposal and rejected by a majority of Member States.

The evaluation mechanism would pursue two objectives:

- to contribute to the development of mutual trust among Member States with respect to asylum policy;
- to function as a mechanism for early warning and preparedness for crises, thus facilitating decisions on the application of emergency measures in such situations.

The 'emergency mechanism', strongly advocated by the Commission, would allow for the temporary suspension of transfers of asylum seekers to a particular Member State which found itself in a situation of strong and disproportionate pressure on its asylum system.

The discussion showed that the new idea for an evaluation mechanism was generally welcomed. A majority of Member States continued to refuse the idea of an emergency mechanism, however, even if accompanied by an asylum evaluation mechanism.

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

The presidency informed the Council about the state-of-play of the directive on the qualification as beneficiary of international protection and the content of entitlements connected to such qualification. After the European Parliament adopted new rules, the only outstanding step is formal adoption by the Council. This is expected to happen before the end of 2011.

The new rules will simplify decision-making during asylum procedures and lead to more robust decisions at first instance, thus improving the efficiency of the asylum process and preventing abuse. They will also enhance effective access to rights taking into account specific integration challenges of beneficiaries of international protection and approximate rights and benefits of refugees and of beneficiaries of subsidiary protection. Finally, the amendments ensure coherence with the developing jurisprudences of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR).

Once adopted, the directive needs to be transposed into national law within two years after its entry into force. It will be the first in a package of five legal instruments to be adopted for the creation of the Common European Asylum System (CEAS) by end 2012, a date confirmed by the European Council in June 2011.

The other proposals concern:

- the Dublin Regulation,
- the Eurodac Regulation,
- the Reception Conditions Directive
- the Asylum Procedures Directive.

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

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
- 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.

International protection: standards for the qualification and status of third country nationals or

stateless persons and the content of the protection granted. Recast

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 minors 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.