

Qualification Directive

2016/0223(COD) - 13/07/2016 - Legislative proposal

PURPOSE: to establish new 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 and amending [Council Directive 2003/109/EC](#) concerning the status of third-country nationals who are long-term residents.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Common European Asylum System is based on rules determining the Member State responsible for applicants for international protection, common standards for asylum procedures, reception conditions, the recognition and protection of beneficiaries of international protection.

Notwithstanding the significant progress that has been made in the development of the Common European Asylum System (CEAS), there are still notable differences between the Member States in the types of procedures used, the reception conditions provided to applicants, the recognition rates and the type of protection granted to beneficiaries of international protection. These divergences contribute to secondary movements and asylum shopping, create pull factors, and ultimately lead to an uneven distribution among the Member States of the responsibility to offer protection to those in need.

Recent large scale arrivals have shown that Europe needs an effective and efficient asylum system able to assure a fair and sustainable sharing of responsibility between Member States and to ensure the quality of the decisions made.

Against this backdrop, the Commission presented a first set of proposals to reform the Common European Asylum System delivering on three priorities identified in its Communication:

- [establishing a sustainable and fair Dublin system](#) for determining the Member State responsible for examining asylum applications,
- [reinforcing the Eurodac system](#) to better monitor secondary movements and facilitate the fight against irregular migration,
- establishing a genuine [European Union Agency for Asylum](#) to ensure the well-functioning of the European asylum system.

With the second package, the Commission is completing the reform of the Common European Asylum System by adopting four additional proposals:

1. a proposal replacing the Qualification Directive with a Regulation, setting uniform standards for the recognition of persons in need of protection and the rights granted to beneficiaries of international protection;
2. a [proposal replacing the Asylum Procedures Directive with a Regulation](#), harmonising the current disparate procedural arrangements in all Member States and creating a genuine common procedure;
3. a [proposal revising the Reception Conditions Directive](#);
4. a [structured Union resettlement framework](#), moving towards a more managed approach to international protection within the EU.

CONTENT: this draft Regulation lays down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection as well as for uniform status for refugees or for persons eligible for subsidiary protection.

While the existing recast Qualification Directive has contributed to some level of approximation of the national rules, it appears that recognition rates still vary between Member States and there is equally a lack of convergence as regards decisions on the type of protection status granted by each Member State.

The differences in recognition rates and in the level of rights in the national asylum systems attached to the protection status concerned provide strong indication of the need for a more harmonised approach. These differences can create incentives for applicants for international protection to claim asylum in Member States where those rights and recognition levels are perceived to be higher than others. In addition there is also need to address possible secondary movements of beneficiaries of international protection by clarifying that they are to reside in the Member States which granted them protection.

In view of the above, the proposal aims at:

1. Further harmonisation of the common criteria for recognising applicants for international protection by providing for more prescriptive rules.

The main amendments concern the following issues:

- material scope: on the one hand, the Regulation seeks to set out the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection and on the other set out the content of the international protection which they are granted. Given that the choice of instrument of this proposal is a Regulation, there is no longer a provision allowing Member States to grant more favourable treatment. However Member States are free to grant a national humanitarian status to those who do not qualify under the present Regulation. In addition, Member States may introduce national measures beyond what is regulated by the current Regulation, but only in a way which does not undermine the application of its provisions;
- assessments of the facts: the proposal establishes the obligation of the applicant for international protection to substantiate the application; by providing all the elements available to him or her, to cooperate and to remain present on the territory of the Member State throughout the procedure;
- internal protection: a new obligation is provided to assess the possibility of internal protection and if the conditions that he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle in another part of the country of origin are fulfilled, to determine that the applicant is not in need of international protection;

- reasons for persecution: in accordance with relevant case law of the Court of Justice of the European Union, the proposal clarifies that a determining authority cannot reasonably expect an applicant to behave discreetly or abstain from certain practices, where such behaviour or practices are inherent to his or her identity, to avoid the risk of persecution in his or her country of origin;
- exclusion: the commitment of certain crimes (particular cruel actions and terrorist acts) are considered as a basis for exclusion from being a refugee even if committed with a political objective.

2. More convergence of the asylum decisions across the EU by obliging determining authorities of the Member States, when assessing applications, to take into account the common analysis and guidance on the situation in the country of origin, provided at Union level by the European Union Agency for Asylum and the European networks on country of origin information in accordance with the new provisions of the proposed Regulation on the European Union Agency for Asylum.

Moreover, new provisions on cessation of status are provided. As regards the subsidiary protection status, the proposal provides for the obligation for determining authorities to base themselves on the Agency guidance when assessing whether refugees and beneficiaries of subsidiary protection respectively have ceased to be eligible to the international protection status granted to them.

3. Introducing systematic and regular status reviews: the proposal imposes obligations upon Member States to carry out systematic and regular status reviews in case of significant changes in the situation in the country of origin as well as when they intend to renew the residence permits, for the first time for refugees and for the first and second time for beneficiaries of subsidiary protection.

At the same time, it is essential that Member States promote the integration of beneficiaries into their societies. In this respect, the proposal clarifies the scope of the rights and obligations of beneficiaries of international protection. It also provides incentives for their active integration while protection is granted by allowing Member States to make the granting of certain social assistance conditional on effective participation in integration measures.

Finally, decisions ending refugee or subsidiary protection status shall take effect only after a period of three months providing persons whose status has been withdrawn with an effective opportunity to apply for another legal status, such as for work related purposes.

4. Addressing secondary movements of beneficiaries of international protection, by clarifying the obligations of a beneficiary to stay in the Member State which has granted protection and providing for additional disincentives through the modification of the Long-term Residents Directive, by restarting the calculation of legal residence required there in case the beneficiary is found in another Member States without the right to reside or stay. It is expected that this proposed measure will be an incentive for beneficiaries of international protection to comply with the rules and to avoid unauthorised secondary movements, since otherwise they would risk prolonging the waiting period for the acquisition of the long-term resident status and the related right to intra-EU mobility.

5. Further harmonising the rights of beneficiaries of international protection, in particular as regards the validity and format of residence permits, by specifying the scope of the rights to be given access to with special regard to social rights:

- residence permits and travel documents: the proposal provides for a new explicit harmonisation of both the validity period and the format of the residence permit, but keeping the difference between beneficiaries of subsidiary protection and refugees. For subsidiary protection, the residence permit will be valid for 1 year renewable for 2 years (1+2+2 years formula) and for refugees the residence permit will be valid for 3 years renewable for 3 years (3+3+3 year formula). It is also proposed to harmonise the minimum security and biometric features of the travel documents, by obliging the Member States to issue travel documents with a minimum one year validity;
- social security: the scope of social security is clarified for the sake of legal clarity by a cross reference to the social security coordination regulation.

6. Strengthening integration incentives for the beneficiaries of international protection:

- social assistance: core benefits are to be understood to cover at least minimum income support, assistance in case of illness, or pregnancy, and parental assistance if these benefits exist and granted to nationals. As a measure to provide for integration incentives, it is proposed to allow Member States to condition the granting of certain social assistance to the effective participation in integration measures;
- access to integration facilities: as a corresponding measure a possible obligation for the beneficiaries to participate in integration measures is established. However, when obliging beneficiaries of international protection to effectively participate in integration measures.

Monitoring and evaluation: the Commission shall report to the European Parliament and the Council on the application of this Regulation by no later than two years from entry into force of this Regulation and every five years thereafter.

Territorial provisions: in accordance with Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Schengen area, annexed to the TEU and the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption of this Regulation.

Under the Protocol on the position of Denmark, annexed to the TEU and the TFEU, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU.

The participation of the United Kingdom, Ireland and Denmark in the arrangements laid down in this proposal repealing the recast Qualification Directive 2011/95/EU, will be determined in the course of negotiations in accordance with these Protocols.