



**COUNCIL OF  
THE EUROPEAN UNION**

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Subject : Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

**COMMON GUIDELINES**

**Consultation deadline : 19.04.2004**

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Delegations will find below the text of the Preamble to the above-mentioned proposal as agreed by JHA Counsellors on 5 April 2004, subject to a Parliamentary scrutiny reservation by the Netherlands delegation.

Proposal for a

**COUNCIL DIRECTIVE**

**on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 1 (c), 2 (a) and 3 (a) of the first paragraph of Article 63 thereof,

Having regard to the Proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Whereas:

- (1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (2) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.

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<sup>1</sup> OJ C 51E, 26.2.2002, p. 325.

<sup>2</sup> OJ C 300E, 11.12.2003, p. 25.

<sup>3</sup> OJ C 221, 17.9.2002, p. 43.

<sup>4</sup> OJ C 278, 14.11.2002, p. 44.

- (3) The Geneva Convention and Protocol provide the cornerstone of the international legal regime for the protection of refugees.
- (4) The Tampere Conclusions provide that a Common European Asylum System should include in the short term the approximation of rules on the recognition of refugees and the content of refugee status.
- (5) The Tampere Conclusions also provide 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.
- (6) The main aim 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 these persons in all Member States.
- (7) The approximation of rules on the recognition and content of refugee status and subsidiary protection should help to limit the secondary movements of applicants for asylum between Member States, where such movement is purely caused by differences in legal frameworks.
- (8) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for third country nationals and stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person who otherwise needs international protection.
- (9) Those third country nationals or stateless persons, who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds, fall outside the scope of this Directive.

- (10) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members.
- (11) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.
- (12) The “best interests of the child” should be a primary consideration of Member States when implementing this Directive.
- (13) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty Establishing the European Community.
- (14) The recognition of refugee status is a declaratory act.
- (15) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.
- (16) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (17) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (18) In particular, it is necessary to introduce common concepts of: protection needs arising *sur place*; sources of harm and protection; internal protection; and persecution, including the reasons for persecution.

- (19) Protection can be provided not only by the State but also by parties or organisations, including international organisations, meeting the conditions of Article 9A(2) and (3), which control a region or a larger area within the territory of the State.
- (20) It is necessary when assessing applications from minors for international protection that Member States should have regard to child-specific forms of persecution.
- (21) It is equally necessary to introduce a common concept of the persecution ground “membership of a particular social group”.
- (22) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combatting terrorism, which declare that "acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations".
- (23) As referred to in Article 14B, "status" can also include refugee status.
- (24) Minimum standards for the definition and content of subsidiary protection status should also be laid down. The subsidiary protection regime should be complementary and additional to the refugee protection regime enshrined in the Geneva Convention.
- (25) It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection status. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.
- (26) Risks to which a population of a country or a section of the population is generally exposed do normally not create in itself an individual threat in line with Article 15 (c).
- (27) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.

- (28) The notion of national security and public order also covers cases in which a third country national belongs to an association which supports international terrorism or supports such an association.
- (29) While the benefits provided to family members of beneficiaries of subsidiary protection status do not necessarily have to be the same as those provided to the qualifying beneficiary, they need to be fair in comparison to those enjoyed by beneficiaries of subsidiary protection status.
- (30) 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 in line with Article 22.
- (31) This Directive does not apply to financial benefits from the Member States which are granted to promote education and training.
- (32) The practical difficulties encountered by beneficiaries of refugee or subsidiary protection status concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualification should be taken into account.
- (33) Especially to avoid social hardship, it is appropriate, for beneficiaries of refugee or subsidiary protection status, to provide without discrimination in the context of social assistance the adequate social welfare and means of subsistence.
- (34) With regard to social assistance and health care, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection 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.
- (35) Access to health care, including both physical and mental health care, should be ensured to beneficiaries of refugee or subsidiary protection status.

- (36) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding non-refoulement, the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.
- (37) Since the objectives of the proposed action, namely to establish minimum standards for the granting of international protection to third country nationals and stateless persons by Member States cannot be sufficiently attained by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (38) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 28 January 2002, its wish to take part in the adoption and application of the present Directive.
- (39) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 13 February 2002, its wish to take part in the adoption and application of the present Directive.
- (40) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of the present Directive and is not bound by it or subject to its application,