

Brussels, 21st October 2009

Questions and Answers on the Commission Proposal to amend the Asylum Procedures and the Qualification Directive

Why is it necessary to have Community rules for the qualification and status of beneficiaries of international protection as well as common procedural rules for granting and withdrawing it?

The Treaty establishing the European Community specifically requested the Council to adopt standards for the qualification and status of persons who need international protection and the content of the protection granted. This would be an integral part of the Common European Asylum System called for by the EU Heads of State and Government meeting in Tampere in 1999. Since then, asylum has been considered an issue to be tackled at EU level because in a Europe with no internal borders conditions for asylum seekers and refugees must be the same in all EU countries, as reaffirmed by the European Pact on Immigration and Asylum adopted by the European Council in October 2008.

During the first phase of the establishment of the Common European Asylum System (1999-2005) an important number of legislative measures harmonising common minimum standards in the area of asylum were adopted. The Qualification Directive¹ guarantees that the protection needs of asylum seekers are assessed according to the same criteria wherever they make their claim in Europe and that, on the basis of their protection needs, they are entitled to a minimum level of rights in all Member States. The Asylum Procedures Directive² laid down the foundations for a fair and efficient asylum procedure.

The Qualification Directive specifies who should be recognised as a refugee or as a beneficiary of subsidiary protection as a result of persecutions or serious harm suffered in the country of origin as well as who does not deserve protection because they have committed serious crimes. Its provisions include minimum standards on protection from refoulement, information, maintaining family unity, residence permits, travel documents, access to employment, access to education, social welfare, healthcare, access to accommodation, freedom of movement, access to integration facilities, and repatriation as well as specific provisions for children and vulnerable persons.

The Asylum Procedures Directive introduces a number of procedural guarantees and rights of paramount importance for genuine refugees seeking protection in Member States. While it leaves sufficient space for Member States to preserve their national specificities, it provides for important safeguards for asylum applicants such as the opportunity of a personal interview, comprehensive information about the procedure

¹ Council Directive 2004/83/EC of 29 April 2004 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

² Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Official Journal L 326 , 13/12/2005 p. 13 – 34. Available in Eur-Lex: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML>

at the very initial stage of the process, a motivated decision on the asylum claim, and the Member States' duty to meet special needs of unaccompanied children. The proper implementation of the obligatory provisions of the Directive is a vital precondition for moving to a common asylum procedure, as described in the Tampere Conclusions and reiterated in the Hague Programme.

Why is the Commission now proposing to amend the Qualification and the Asylum Procedures Directive?

The Hague Programme agreed by the European Council in 2004 called for the submission by the Commission of the second-phase instruments of the Common European Asylum System (CEAS) to the Council and the European Parliament with a view to their adoption before the end of 2010. The Commission's intention to propose amendments to the Qualification Directive in the framework of the second phase of the Common European Asylum System was confirmed in its Policy Plan on Asylum³. Furthermore, the European Pact on Immigration and Asylum invited the Commission to present proposals for establishing, in 2010 if possible and in 2012 at the latest, a single asylum procedure comprising common guarantees and for adopting a uniform status for refugees and the beneficiaries of subsidiary protection. Indeed, the European Council observed considerable disparities one Member State and another concerning the grant of protection and the forms that protection takes. While reiterating that the grant of protection and refugee status is the responsibility of each Member State, the European Council considered that the time has come to take new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague programme, and thus to offer a higher degree of protection, as proposed by the Commission in its asylum action plan.

The envisaged measures are expected to improve the coherence between EU asylum instruments, simplify, streamline and consolidate substantive and procedural standards of protection across the Union and lead to more robust determinations at first instance, thus preventing abuse and improving efficiency of the asylum process.

▪ The Qualification Directive

The adoption of minimum standards was not sufficient in itself: divergences in asylum legislations and practices persist, despite the measures introduced in the first phase of harmonization. Some provisions of the Qualification Directive are vague or ambiguous, which leaves room for disparate implementation of the agreed standards. As a result, they are insufficient to secure full compatibility with the evolving case-law on human rights of the ECtHR and ECJ as well as refugee law standards, and they impact negatively on the quality and efficiency of decision-making. Under the current Directive, the chances of a person to be granted international protection vary tremendously depending on the Member State processing the asylum application. The asylum "lottery" resulting from deficiencies in substantive standards has also been a driver behind persisting secondary movements, certain Member States being perceived as more "attractive" destinations than others.

Moreover, the current standards are also not entirely adequate to ensure effective access to the rights to be granted to beneficiaries of international protection with a view to supporting their integration. They do not take sufficiently into account the specific practical difficulties faced by beneficiaries of international protection compared to other legally residing third-country nationals.

The revision of the Qualification Directive is in particular complementary to the revision of the Asylum Procedures Directive. The revision of the latter Directive aims at providing asylum authorities with procedural tools which can adequately back up

³ COM(2008) 360

the correct and consistent implementation of the substantive criteria of the Qualification Directive and more generally at boosting the overall capacity of asylum authorities to make robust decisions and to efficiently manage the asylum process, through a wide range of frontloading measures.

▪ **The Asylum Procedures Directive**

The disparity of national asylum legislations and practices was recognised from the beginning as one of the main factors affecting asylum flows across the EU. The adoption of the Asylum Procedures Directive is not sufficient in itself: divergences in asylum legislations and practices persist, despite the measures introduced in the first phase of harmonization. Some of the minimum standards are vague, which leaves room for disparate implementation of the agreed standards. Certain standards may also seem insufficient to ensure coherence with the evolving case law of the European Court of Justice and the European Court of Human Rights. Thus, asylum seekers experience different treatment and benefit from a different level of procedural fairness depending on where in the EU her/his protection claim is examined. The derogations authorised by the Directive have negatively affected the quality of the procedures. As a consequence, a large share of first instance decisions is challenged on appeal, which results in prolonged litigation. A significant number of first instance decisions are overturned by appeal bodies and repeat applications remain high. Once again, the asylum "lottery" resulting from deficiencies in procedural standards has also been a driver behind continuous secondary movements, certain Member States being perceived as more "attractive" destinations than others.

Which amendments are proposed?

▪ **The Qualification Directive**

The proposal is expected to simplify and streamline decision-making procedures and lead to more robust determinations at first instance, thus improving the efficiency of the asylum process and preventing fraud, and to ensure coherence with the jurisprudences of the European Court of Justice and the European Court of Human Rights.

In particular, the amendments aim to:

- clarify certain legal concepts such as "actors of protection" or "internal protection" used to define the grounds for protection, thus enabling decision-makers throughout the EU to apply the criteria consistently and to identify correctly who is in need of protection and who is not. This will also lead to quicker access to the rights set out in the Directive for persons genuinely in need of protection while at the same time supporting Member States' efforts to rapidly remove from the territory failed asylum seekers and improving the credibility of the whole process;
- eliminate the differences between the rights of refugees and beneficiaries of subsidiary protection which are not objectively justified, for instance regarding the duration of residence permits or access to social welfare, health care and to the labour market. The approximation of the two statuses will rationalize procedures and reduce administrative costs associated with maintaining two protection statuses. Moreover, it gives effect to the call of the Hague Programme and the European Pact on Immigration and Asylum for greater uniformity of protection;
- enhance effective access to rights already granted by the Directive by taking into account the specific integration challenges faced by refugees and beneficiaries of subsidiary protection and which translate into practical obstacles (lack of documentary evidence to support their academic and professional capacities, limited financial capacities, general lack of support from the country of origin). Accordingly,

the proposal facilitates the recognition of qualifications, access to vocational training and employment as well as to integration facilities.

▪ **The Asylum Procedures Directive**

The proposal provides for a single procedure, thus making it clear that applications should be considered in the light of both forms of international protection set out in the Qualification Directive, in order to facilitate efficient application of the asylum *acquis* and simplify applicable arrangements. It further specifies the rules applicable in the single procedure, such as a mandatory sequence of an examination of the protection needs in relation to refugee status and subsidiary protection status, and extends the present rules on the withdrawal of refugee status to cases of the withdrawal of subsidiary protection.

To this end, it is proposed in particular to:

- streamline the examination process of applications by setting out as a general time limit of six months for completing procedures at first instance and by simplifying and clarifying procedural notions and devices such as the concept of "safe country of origin" or the accelerated procedures. The proposal provides for a transitory period of three years to allow Member States to adapt their national procedures to comply with the envisaged time limit;
- improve quality of asylum decisions, by "frontloading" services, advice and expertise and encouraging Member States to deliver robust determinations at first instance. The improved efficiency of the system should allow to quicker distinguish between asylum seekers and other migrants in mixed arrivals, improve the defendability of negative decisions, make possible to better identify cases of unfounded and abusive applications, reduce reception costs and support the efforts to remove failed asylum seekers from the territory;
- increase procedural guarantees for vulnerable persons such as victims of torture or unaccompanied children;
- facilitate access to examination procedures by specifying the obligations of border guards, police and other authorities who first come into contact with persons seeking protection and requiring Member States to ensure that relevant information and advice are made available from the very initial stage of the procedure for persons who wish to lodge an application for international protection;
- facilitate access to effective remedy for asylum applicants in line with Community and international obligations of Member States by requiring a rigorous review of the cases by courts and tribunals and by laying down rules on suspensive effect of appeals.

What other tools are there to help Member States implement the asylum *acquis*?

The future European Asylum Support Office, an operational agency designed to coordinate and step up cooperation on asylum between Member States, is to support Member States in their efforts to implement a more consistent and fairer asylum policy. The EASO will support exchanges of good practices as well as training for officials of national administrations, for instance by managing the European Asylum Curriculum. It will also be responsible for the management and development of Country of Origin Portal, which allows Member States to have at their disposal relevant and up-to-date information about the countries of origin of the asylum seekers. The EASO will assist Member States in matters related to translation and interpretation needs. Support teams deployed by the Office will also help to find solutions for Member States subject to particular pressures

The European Refugee Fund (ERF) is another tool supporting the efforts of Member States to apply fair and effective asylum procedures and to promote good practices in the field of asylum so as to protect the rights of persons requiring international protection. The ERF can provide Member States with financial assistance in a wide range of cases: structures and training to ensure access to asylum procedures for asylum seekers, legal assistance, material aid and medical or psychological care, social assistance, the provision of support services such as translation, training for the national staff, measures promoting the integration of beneficiaries of international protection into Member States' societies. Furthermore, the ERF also provides assistance to Member States which may face particular pressure.

When will the proposals take effect?

The Commission proposals will only become EU law after their negotiation and formal adoption by the Council and the European Parliament using the co-decision procedure. It is expected that the negotiations in the Council and the European Parliament will take approximately two years. Once the amended Directives are adopted and published in the Official Journal, the Member States will have two years to transpose them into national law. In addition, regarding the Asylum Procedures Directive, Member States will have three more years from the date of the transposition to adapt their national systems to ensure that a procedure is concluded within 6 months after the application is lodged.

During the negotiation of the amendments, the provisions of the current Directive remain applicable in the Member States.

The Common European Asylum System: What is the state of play?

On 3 December 2008, the Commission presented the first concrete proposals to implement the Policy Plan on Asylum and the Pact on Immigration and Asylum. They aimed to amend three of the existing legislative instruments of the Common European Asylum System: the Directive on reception conditions for asylum-seekers⁴; the Dublin Regulation which determines the Member State responsible for an asylum application⁵; and the Eurodac Regulation⁶, a data base containing the

⁴ European Commission, Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers, COM (2008) 815 final/2, 9.12.2008 ('Proposal for a Recast Directive');

IP/08/1875:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1875&format=HTML&aged=0&language=EN&guiLanguage=en>

MEMO/08/760 :

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/760&format=HTML&aged=0&language=EN&guiLanguage=en>

⁵ Commission (EC), Proposal for a Regulation of the European Parliament and of the Council establishing an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast), COM (2008) 0243 final, 3 December 2008;

MEMO/08/758:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/758&format=HTML&aged=0&language=EN&guiLanguage=en>

IP08/1875:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1875&format=HTML&aged=0&language=EN&guiLanguage=en>

⁶ COM(2008) 825/3

IP/08/1875:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1875&format=HTML&aged=0&language=EN&guiLanguage=en>

MEMO/08/759 :

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/759&format=HTML&aged=0&language=EN&guiLanguage=en>

fingerprints of asylum seekers, which supports the operation of the Dublin Regulation. Their aim is to ensure that all asylum-seekers are treated in a fair and equal way wherever they make their request for asylum in the EU, and to enhance the efficiency of the EU asylum system:

○ **The "Dublin Regulation" proposal:**

- established a mechanism of suspension of Dublin transfers in limited circumstances in order to prevent that Member States experiencing particular pressure on their asylum systems are not further overburdened because of Dublin transfers;
- ensured that asylum-seekers are not sent to Member States who cannot offer them an adequate standard of protection in particular in terms of reception conditions and access to the asylum procedure;
- clarified the circumstances and procedures for applying certain rules, such as those allowing Member States to take responsibility for an asylum seeker for humanitarian and compassionate reasons;
- introduced additional guarantees concerning the right to appeal against a transfer decision, in order to ensure that the right to remedy is effective;
- aimed to facilitate the right to family reunification, in particular as concerns the reunification of an applicant with relatives between whom there is a dependency link and with beneficiaries of subsidiary protection;
- better defined the rules applicable to unaccompanied minors in order to protect their best interests.

○ **The "EURODAC Regulation" proposal:**

- established rules to ensure truly prompt transmission of fingerprints to the Central Unit of EURODAC in order to ensure that the Member State responsible under the Dublin Regulation for examining the application is correctly identified;
- established technical rules to ensure that Member States delete data which is no longer necessary for the purpose for which were collected and to ensure that Commission can better monitor the respect of the data protection principles;
- clarified the provisions ensuring effective monitoring by the Commission and the European Data Protection Supervisor (EDPS) of access to data in EURODAC by national authorities.

○ **The "Reception Conditions Directive" proposal:**

- ensured that detention is used only in exceptional cases and provides for legal safeguards in order to ensure that detention is not arbitrary, and guarantees that children are not to be detained unless it is in their own interest (and unaccompanied minors shall never be detained);
- ensured that mechanisms are established at national level with a view to identifying early in the asylum procedure persons with special needs and to guarantee that appropriate treatment is available;
- aimed to facilitate access to the labour market and ensure that further restrictions applied by Member States do not hinder actual access to employment;

These three proposals were shortly followed on 18 February 2009 by a proposal for the creation of the **European Asylum Support Office**⁷ to support Member States in

⁷ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office, (COM (2009) 66 final)

their efforts. EASO will be responsible for coordinating support teams made up of national experts that will be deployed at the request of Member States faced with particular pressure. It will also provide scientific and technical assistance for the development of asylum policy and legislation. The Office will be set up in the form of an agency, an independent European body. The Commission and the Member States will be represented on the Management Board, which will be the Office's governing body. The Office will work closely with the authorities responsible for asylum in the Member States and with the Office of the United Nations High Commissioner for Refugees. There will also be a Consultative Forum for dialogue with civil society organisations.

On 2 September 2009, the Commission also proposed the establishment of a "**Joint EU Resettlement Programme**"⁸. This programme aims to develop resettlement within the EU into a more effective instrument to give protection to refugees, providing for closer political and practical cooperation among EU Member States. This initiative concerns the resettlement of refugees, particularly the vulnerable ones, from third countries to an EU Member State. Resettlement is the transfer of refugees, who have provisional protection, from the first country of asylum to another country, where they can start a new life and find permanent protection. The programme proposed by the Commission provides for closer political and practical cooperation among the Member States, so as to increase the effectiveness and cost-efficiency of their resettlement activities, and the humanitarian and strategic impact of resettlement. It consists of a mechanism which allows for the setting of common annual priorities on resettlement and for a more effective use of the financial assistance available for member States through the European Refugee Fund. Various activities related to the identification of refugees to be resettled and their reception will be carried out by Member States jointly and will be supported by the future European Asylum Support Office. Member States will remain free to decide whether they want to resettle at all, and if so, how many refugees they wish to resettle.

Negotiations on the December 2008 Asylum package (the "Dublin Regulation", the "EURODAC Regulation", the "Reception Conditions Directive" proposals) as well as on the EASO proposal are currently ongoing. The European Parliament already adopted the respective reports on 7 May 2009. The revised proposal amending the EURODAC regulation as well as the proposal on the establishment of a "Joint EU Resettlement Programme" are still at the very early stage of the negotiations with the Council and the European Parliament.

IP/09/275:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/275&format=HTML&aged=0&language=EN&guiLanguage=en>

MEMO/09/71:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/71&format=HTML&aged=0&language=FR&guiLanguage=en>

⁸ IP/09/1267: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1267>

MEMO/09/370:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/370&format=HTML&aged=0&language=EN&guiLanguage=en>