

Reform of the Qualification Directive

OVERVIEW

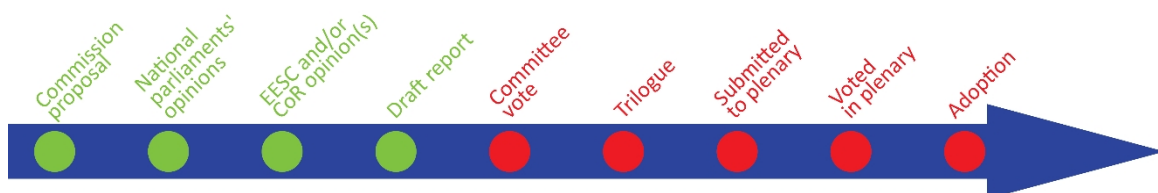
The current refugee and migrant crisis in Europe has called into question existing EU legislation on asylum, in particular the criteria according to which applicants for international protection can qualify for refugee or subsidiary protection status, as recognised in the Qualification Directive.

Although national asylum rules are more closely aligned than they were, major differences in approach persist across the EU. This can lead asylum-seekers to claim refuge in Member States whose asylum systems appear to be more generous, rather than in the Member State officially responsible for their asylum applications.

The Commission's proposal of 13 July 2016 proposes to replace the Qualification Directive with a regulation, setting uniform standards for the recognition of people in need of protection and for the rights granted to beneficiaries of international protection.

Proposal for a regulation of the European Parliament and of the Council 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs	COM(2016) 466 13.7.2016
<i>Rapporteur:</i>	Tanja Fajon (S&D, Slovenia)	
<i>Shadow rapporteurs:</i>	Alessandra Mussolini (EPP, Italy) Jussi Halla-Aho (ECR, Finland) Angelika Mlinar (ALDE, Austria) Barbara Spinelli (GUE/NGL, Italy) Jean Lambert (Greens/EFA, UK) Fabio Massimo Castaldo (EFDD, Italy)	2016/0223(COD) Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Vote on report in LIBE committee	



Introduction

Since 2015, migration has become one of the most pressing issues in the EU, owing in particular to the vast influx of migrants seeking refuge from violence and poverty in the Middle East and Africa.

According to [Eurostat](#), 1 258 865 asylum applications were registered in the EU in 2016 compared with 1 322 825 in 2015 and 626 960 in 2014. In absolute values, the EU Member States to receive the highest number of asylum-seekers in 2016 were Germany (745 155), Italy (122 960), France (83 485), Greece (51 110), and Austria (41 950). As regards migrants' countries of origin, the majority of asylum-seekers in the EU in 2016 came from Syria (339 285), Afghanistan (186 505), Iraq (129 975), Pakistan (49 825) and Nigeria (47 680).

According to the International Organization for Migration ([IOM](#)), 5 082 migrants lost their lives trying to cross the Mediterranean in 2016, compared with 3 777 in 2015 and 3 279 in 2014. According to the UN Refugee Agency ([UNHCR](#)), the number of dead or missing persons in the Mediterranean was 5 022 in 2016, 3 771 in 2015, and 3 500 in 2014.

Context

The unprecedented migratory pressure on Europe has confirmed the need to reform the Common European Asylum System (CEAS), in general, and the rules on recognition of beneficiaries of international protection, in particular.

On 13 May 2015, the Commission presented its [European Agenda on Migration](#) highlighting the need for a comprehensive approach to migration management. Since then, the European Union has been working hard to address the challenges of managing migration flows more effectively, in accordance with the principles of solidarity and shared responsibility. One such challenge is the reform of the CEAS.

The CEAS comprises rules determining the Member State responsible for examining applications for international protection, and establishing common standards for asylum procedures, reception conditions, and recognition and protection of beneficiaries of international protection.

On 6 April 2016, the Commission set out its priorities for structural reform of the European asylum and migration framework in its communication [Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe](#), outlining the various steps to be taken towards a more efficient, fair and humane asylum policy.

On 4 May 2016, the Commission presented a first set of proposals to reform the CEAS aimed at establishing a more fair and sustainable [Dublin system](#) for determining the Member State responsible for examining asylum applications, reinforcing the [Eurodac system](#) to facilitate the fight against irregular migration, and establishing a genuine [European Agency for Asylum](#) to ensure the smooth functioning of the European asylum system.

On 13 July 2016, the Commission presented a second set of proposals to complete the reform of the CEAS. The second package includes a proposal replacing the [Asylum Procedures Directive](#) with a regulation, harmonising the procedural arrangements in all Member States and creating a genuine common asylum procedure; a proposal replacing the Qualification Directive with a regulation, setting uniform standards for the recognition of persons in need of protection and for the rights granted to beneficiaries of international protection; a proposal revising the [Reception Conditions Directive](#) to further

harmonise reception conditions in the EU and reduce secondary movements; and a proposal establishing an [EU Resettlement Framework](#) to secure orderly and safe pathways to Europe for people in need of international protection.

Existing situation

The recast Qualification Directive ([Directive 2011/95/EU](#)) lays down criteria for applicants for international protection to qualify for refugee or subsidiary protection status, and sets out rights conferred to beneficiaries of international protection.

Although the current directive has contributed to the approximation of national rules, it appears that the recognition rates and types of protection status granted still vary considerably across the EU.

For example, with regard to the differences between recognition rates, [Eurostat data](#) for the third quarter of 2016 shows that the recognition rates for asylum-seekers from Afghanistan varied from 97 % in Italy to 0 % in Bulgaria.

As regards the differences between the types of protection status granted, the above Eurostat data reveals that, for example, United Kingdom, Ireland, Greece, Lithuania, Luxembourg, and Slovenia granted refugee status to all successful asylum-seekers from Syria, whereas Spain, Cyprus, Malta, Sweden, the Czech Republic, and Hungary gave them subsidiary protection status in most cases.

Moreover, it appears that there are considerable differences between Member States' policies as regards the access to rights and duration of residence permits granted. For example, the EPRS study [Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#) shows diverging national policies as regards access to the labour market for beneficiaries of international protection.

Furthermore, it seems that the current provisions on cessation of refugee or subsidiary protection status are not systematically used in practice, which means that Member States do not always ensure that international protection is granted only for as long as the risk of persecution or serious harm exists.

Finally, some of the rules in the current directive are optional by nature and therefore allow Member States a wide margin of discretion. In addition, the EP Policy Department C study [The Implementation of the Common European Asylum System](#) argues that, depending on their interpretation and application by Member States, there are provisions in the recast Qualification Directive that may still give rise to protection gaps. This study also suggests that the current directive is not suited to situations of large-scale arrivals or able to prevent backlogs in asylum determination processing.

According to the Commission, the above challenges indicate a need for a more harmonised approach. Differences in recognition rates and the type of protection status granted may create incentives for asylum-seekers to claim refuge in Member States whose asylum systems are perceived to be more generous, rather than in the Member State that should be responsible for their asylum applications under the Dublin rules.

Parliament's starting position

In its [resolution](#) of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the Parliament pointed out that further steps are necessary to ensure that the CEAS becomes a truly uniform system. Addressing integration, the Parliament emphasised that host Member States must offer refugees

support and opportunities to integrate and build a life in their new society. It noted that this should necessarily include accommodation, literacy and language courses, intercultural dialogue, education and professional training, as well as effective access to democratic structures in society, as provided for in the Qualification Directive.

Preparation of the proposal

In order to prepare its proposal, the Commission conducted stakeholder consultations and carried out ex-post evaluations of existing legislation.

Following its [communication](#) of 6 April 2016, the Commission launched a debate on the different options for reforming the EU asylum rules. The Commission discussed the communication with Member States, non-governmental organisations (NGOs) and the UN Refugee Agency (UNHCR) in May 2016, and with the coordinators of the Parliament's Committee on Civil Liberties in June 2016. Written contributions were also received.

The Commission commissioned two external studies in 2015 (not yet published). One focused on the application of the current recast Qualification Directive by the Member States, and the other examined implementation problems, identifying shortcomings and assessing whether the current directive had led to greater convergence in Europe.

The study on implementation found that the current recast Qualification Directive has contributed in some areas to a higher level of approximation of the national rules. However, it appears that in other fields, its practical application still varies significantly, leading to different outcomes from asylum applications across Member States in terms of recognition rates, even when applicants come from the same country of origin.

The study also concluded that a higher level of harmonisation has been achieved when it comes to aligning the content of rights granted to beneficiaries of subsidiary protection with those of refugees. However, Member States' practices in granting rights to refugees and beneficiaries of subsidiary protection still vary regarding the granting of residence permits, travel documents, social assistance, the type and quality of integration programmes and repatriation assistance.

In addition to the above studies, relevant publications of EASO have been used for the preparation of the Commission proposal, in particular the data collection as part of the 'Quality matrix' on eligibility and exclusion, as well as [EASO Practical Guide: The implementation of Article 15\(c\) QD in EU Member States](#) and legal analysis of Articles 12 and 17 of the recast Qualification Directive.

The changes the proposal would bring

Given the need for a more harmonised approach, it is proposed to replace the current directive with a regulation, which will be directly applicable in all Member States.

The specific aims of the Commission [proposal](#) are to:

- 1. Further harmonise the common criteria for recognising applicants for international protection** by providing for more prescriptive rules and replacing the current optional ones as regards the duty of the applicant to provide evidence for the application, the assessment of internal protection alternatives and the grounds for withdrawal of the status should the beneficiary of international protection represent a danger to the security of the Member State or has been convicted of a particularly serious crime;
- 2. Secure greater convergence between asylum decisions across the EU** by obliging the Member State authorities assessing applications to take into account a 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](#);

3. Ensure that protection is granted only for as long as the grounds for persecution or serious harm persist, without affecting a person's integration prospects. The proposal obliges Member States to carry out systematic and regular status reviews in the event of significant changes in the situation in the country of origin and also when they intend to renew residence permits for the first time for refugees, and for the first and second times for beneficiaries of subsidiary protection. At the same time, the proposal clarifies the scope of the rights and obligations of beneficiaries of international protection. It also provides incentives for their active integration by allowing Member States to make the granting of certain social assistance conditional on effective participation in integration measures in line with the [Action Plan on the integration of third-country nationals](#) presented by the Commission on 7 June 2016. Finally, decisions ending refugee or subsidiary protection status shall take effect only after a period of three months, providing people whose status has been withdrawn with an effective opportunity to apply for another legal status, for work-related purposes for instance;

4. Address secondary movements of beneficiaries of international protection, by clarifying the obligations of a beneficiary to stay in the Member State that has granted protection and providing for additional disincentives through the modification of the Long-term Residents Directive ([Directive 2003/109/EC](#)), and by restarting the calculation of the period required for legal residence in the event that the beneficiary is found in another Member State without the right to reside or stay;

5. Further harmonising the rights of beneficiaries of international protection, in particular as regards the validity and format of residence permits and by clarifying the scope of the rights and obligations of beneficiaries, in particular as regards social security and social assistance.

Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) on the CEAS Reform Package II on 14 December 2016, and recommends:

- including the UNHCR criteria for assessing the internal flight alternative;
- removing Article 12(6) of the Qualification Regulation in order to avoid the automatic application of exclusion causes that do not take the particular background of the applicants into account;
- sharing the burden of proof between the applicant and the determining authority.

In its [opinion](#) on the reform of the CEAS – package II and a Union Resettlement Framework, adopted on 8 February 2017, the European Committee of the Regions (CoR):

- is categorically opposed to the introduction of the regular review and the procedure for withdrawing international protection;
- is extremely concerned at the introduction of a maximum time limit for international protection and with regard to the legitimacy of this constraint;
- recommends considering the possibility, in the event of withdrawal of international protection, of allowing a longer period of time than that provided for in the Commission proposal to obtain a residence permit on other grounds.

National parliaments

No reasoned opinions on the grounds of subsidiarity were [submitted](#) by Member States' National Parliaments by the deadline of 28 October 2016.

Stakeholders' views

This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

In its [Comments on the Commission Proposal for a Qualification Regulation](#), published in November 2016, the European Council on Refugees and Exiles (ECRE) made the following observations and recommendations:

- Article 12: The prohibition of applying a proportionality test and the requirement to treat certain particularly cruel politically motivated acts as serious non-political crimes should be deleted.
- Articles 14, 20 and 23: Provisions requiring the revocation or non-renewal of status, where a person is a threat to public order or a danger to the community following a serious conviction, should be deleted.
- Articles 15 and 21: Mandatory review of international protection status should be deleted.
- Article 8: The application of the internal protection alternative remains in tension with the 1951 Refugee Convention and European Court of Human Rights (ECtHR) case law, and should not be rendered a mandatory criterion for refugee status.
- Article 16: The notion of serious harm stemming from indiscriminate violence should be clarified and adapted to the jurisprudence of both the Court of Justice of the European Union (CJEU) and the ECtHR.
- Article 5: The obligation to reject subsequent applications based on *sur place* protection needs is both unnecessary to secure the integrity of asylum systems and liable to deprive of protection those who have *sur place* protection needs, and should thus be deleted.
- Articles 26 and 28: Given that no objective temporal difference can be established in the protection needs of the two categories of international protection beneficiaries, the duration of residence permits should be equal for refugees and subsidiary protection beneficiaries.
- Directive 2003/109/EC: The restarting of the requisite time period every time a beneficiary is found in another Member State without authorisation discriminates against beneficiaries of international protection with regard to sanctions for secondary movements and should be deleted.

Similar [comments](#) were raised by the Meijers Committee:

- Mandatory review of status: Articles 15 and 21 should be deleted.
- Duration of residence permit: the current wording of Article 24 of Directive 2011/95/EU should be retained.
- Freedom of movement: Article 28(2) should be deleted.
- The amendment of the Long-Term Residence Directive 2003/109: the proposed Article 44 should be amended.

The Jesuit Refugee Service (JRS) raised a number of [concerns](#) about the proposed CEAS reform, including the introduction of compulsory review of international protection status in the proposal for a Qualification Regulation.

Legislative process

The Commission adopted its proposal [COM\(2016\)466](#) on 13 July 2016.

The proposal would replace the current directive with a regulation. It would be adopted on the basis of Article 78(2)(a) and (b) of the Treaty on the Functioning of the European Union ([TFEU](#)), following the ordinary legislative procedure.

The Commission made a general presentation of the July package of proposals at the Council's 'Asylum Working Party' on 15 July 2016 and a more detailed presentation on 29 September, followed by a discussion allowing Member States to express their initial positions.

The Council's Asylum Working Party examined the Commission's proposal at its meetings on 27 and 28 October and 8 November. The main issues raised by the Member States' delegations included:

- certain definitions, such as 'family members', 'withdrawal of international protection', 'social security', 'social assistance' and 'guardian';
- the relationship between national humanitarian and international protection statuses;
- the obligation for Member States to base their decisions on the common analysis and guidance of the proposed EU Agency for Asylum on the situation in the country of origin;
- the burden on Member States to demonstrate availability of internal protection;
- the compulsory systematic and regular protection status reviews;
- the grounds for revoking, ending or refusing to renew refugee status or excluding a person from being eligible for subsidiary protection;
- the 30-day deadline, after international protection is granted, for Member States to issue a residence permit; the period of validity of the residence permit; and the distinction made between the two categories of international protection in this context;
- the access to social security and social assistance;
- the deadline for the appointment of a legal guardian for unaccompanied minors;
- the deadline for the applicability of the regulation;
- the choice of legal instrument (regulation as opposed to directive).

At its meetings of [13 and 14 October](#) and [8 and 9 December 2016](#), the Council discussed the CEAS reform and took note of the state of play of the ongoing examination of the Commission proposal on the basis of progress reports prepared by the Slovak Presidency ([12724/16](#) and [14708/16](#), respectfully).

As regards the European Parliament, the Commission's proposal has been assigned to the Committee for Civil Liberties, Justice and Home Affairs (LIBE), with Tanja Fajon (S&D, Slovenia) appointed as rapporteur.

On 2 March 2017, Tanja Fajon presented her [draft report](#), which was discussed at the LIBE Committee meeting on 9 March. Some 700 amendments have been tabled to the draft report, and these were the subject of a first discussion at the LIBE Committee meeting on 25 April.

EP supporting analysis

Wagner, M., Baumgartner, P., Dimitriadi, A., O'Donnell, R., Kraler, A., Perumadan, J., Schlotzhauer, J., Simic, I., Yabasun, D., [The Implementation of the Common European Asylum System](#), EP Policy Department C, PE 556.953 (2016).

Poptcheva, E., Stuchlik, A., [Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#), EPRS, PE 572.784 (2015).

Other sources

[Qualification of third-country nationals or stateless persons as beneficiaries of international protection, uniform status for refugees or for persons eligible for subsidiary protection and content of the protection granted](#), European Parliament Legislative Observatory (OEIL), 2016/0223(COD).

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