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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.2009
SEC(2009) 1374 final

COMMISSION STAFF WORKING DOCUMENT

accompanying 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

Summary of the Impact Assessment

{COM(2009) 551 }

{SEC(2009) 1373 }

1. PROBLEM DEFINITION

Following an increase between 1996 and 2002, fuelled by conflicts in former Yugoslavia, in the period 2003-2006 numbers of asylum seekers in the EU-27 decreased sharply: from 344 800 asylum applications in 2003 to 197 410 in 2006 (-42.7%). This decreasing trend stopped in 2007, as numbers of applications rose to 222 170 (+12%), mainly due to the inflow of Iraqi asylum seekers. In 2008 there was a further increase (+8%) compared to 2007, as the number of applications reached 257 375. Even so, asylum seekers represent a small fraction of migration flows to the EU (estimated at 1.5 -2 m immigrants per year).

The number of persons residing with a protection status in the EU at the end of 2007 was close to 1.4 m, amounting to approximately 7.5% of the population of legally residing third country nationals and to 0.3% of the total EU population in 2007. This 1.4 m also represents a small part of the worldwide population of refugees, estimated at 11.4 m in 2007.

Council Directive 2004/83/EC (the "Qualification Directive")¹ seeks to limit the secondary movements of applicants for asylum between Member States (MS) by establishing minimum standards harmonising the criteria for the identification of persons in need of international protection and the rights and benefits to be granted to these persons in all MS.

Responses to the 2007 Green Paper, several evaluation reports, studies and consultations held with stakeholders indicate that, due to the unanimity requirement for their adoption, the **minimum standards of the Directive are vague and ambiguous**, containing "gaps" and allowing for derogation possibilities. Moreover, in some cases, compromise was reached at the level of the more "conservative" interpretation of the Geneva Convention relating to the status of refugees, the European Convention on Human Rights (ECHR) and other human rights instruments which are the sources of the international obligations that MS have in common. As a result, the Directive does not guarantee the full compatibility of national implementation measures with these instruments and allows for wide divergences amongst national decision-making practices. Moreover, decision-makers have difficulties to reach quickly robust decisions, whereas the possibility to interpret concepts in different ways results in intensive recourse to appeals and in high rates of successful appeals against negative decisions. Finally, **the current standards of the Directive are not adequate to attain the objectives set by the Hague programme** regarding the establishment of a uniform protection status and further progress with regard to the integration of third-country nationals.

Existing data provide clear indications of the divergences both in recognition rates and practices amongst MS and in terms of standards of protection provided by MS; data also points to poor first-instance decision-making. Statistical evidence further suggests that the Directive has not had any effect on secondary movements: asylum seekers find certain MS more "attractive" destinations than others, partly as a result of their better chances to obtain a status or a higher level of rights there.

¹ Directive of 29 April 2004 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 and the content of the protection granted.

The general problems can be broken down in the following specific problems:

- The concepts “actors of protection”, “internal protection” and "membership of a particular social group" are defined vaguely, which creates a risk of denial of protection as well as a risk of diverse recognition practices;
- Existence of unjustified differences between the content of protection for refugees and beneficiaries of subsidiary protection;
- The specific integration needs of beneficiaries of international protection are not met;
- Existence of unjustified limitations to the exercise of the right of beneficiaries of protection to respect for family life.

2. ADDED VALUE OF EU ACTION AND RESPECT FOR THE PRINCIPLE OF SUBSIDIARITY

Action at the EU level can be expected to be more effective than MS action in several respects.

- **The objectives set by the Hague Programme** regarding a uniform protection status and the integration of third-country nationals **cannot be attained by unilateral MS action.**
- **It is unlikely that the level of protection will be comprehensively raised** to meet the higher international standards as they have evolved through MS' unilateral actions. On the contrary, ‘a race to the bottom’ may occur, since those MS currently providing more generous protection standards may be inclined to lower their standards in order to avoid "attracting" larger numbers of asylum seekers.
- **Secondary movements and the uneven distribution of asylum seekers and beneficiaries of protection will not be reduced.** Only enhanced harmonisation at the EU level can reduce asylum seekers' incentive for movements in so far as they are linked to the divergences of national legislations and practice and the different levels of rights provided in different MS.
- **Ambiguities and vagueness in the existing acquis can only be resolved at EU level.** Action by MS cannot lead to an overall improvement of the quality and efficiency of the asylum process throughout the EU.

3. POLICY OBJECTIVES

The **global objective** is to achieve higher standards of protection across the EU for persons in need of international protection.

The **specific objectives** are the following:

1. To ensure the full and inclusive application of the Geneva Convention and full respect of the ECHR and of the EU Charter of Fundamental Rights;

2. To approximate the content of protection granted to refugees and beneficiaries of subsidiary protection;
3. To raise the overall content of protection taking into account the specific needs of beneficiaries of international protection;
4. To improve the efficiency of the asylum process;
5. To ensure the consistent application of agreed protection standards across the EU.

4. POLICY OPTIONS

The diverse nature of the problems makes it impossible to identify one single all-embracing policy option. The Impact Assessment (IA) proposes thus separate policy options for each of the policy objectives and it sets out 2-4 legislative sub-options or 2-4 legislative and 1 non-legislative for each of these policy options. To determine the elements that should form the preferred option, all sub-options are assessed against the baseline scenario in terms of effectiveness, efficiency and coherence, but also in terms of their proportionality and their social impacts and impacts on fundamental rights. Given the level of complexity of the proposed policy options, this summary is limited to a description of the main elements composing the preferred policy option.

5. MAIN ELEMENTS OF THE PREFERRED POLICY OPTION

The preferred policy option:

- Restricts the broad interpretation of the concepts "actors of protection" and "internal protection" in line with the standards of the Geneva Convention and the ECHR, by specifying the criteria for assessing the accessibility and effectiveness of protection that should be available to the applicant. The preferred practical cooperation option foresees the joint mapping of the criteria used for this assessment.
- Ensures a more inclusive interpretation of the concept "particular social group" in line with the standards of the Geneva Convention, by better defining the significance to be attached to aspects arising from the applicants' gender and thus enhancing access to protection in particular for women. The joint mapping of the interpretations as part of the practical cooperation element will contribute to the approximation of decision-making.
- Approximates the rights of beneficiaries of subsidiary protection to those of refugees by removing all differences currently allowed by the Directive which can no longer be considered as objectively justified, regarding the duration of their residence permit; access to employment and employment-related education activities; access to social welfare, healthcare and to integration facilities; access to benefits for their family members.
- Enhances the integration of beneficiaries of protection taking into account their specific needs: It grants them enhanced access to procedures for recognition of their qualifications; vocational training and employment support; accommodation and integration programmes that take into account their specific needs. The practical cooperation foreseen would help MS identify and share good and cost-efficient practices.

- Enhances respect for the right of beneficiaries of protection to family life: it broadens the definition of family members so as to address the case where a beneficiary is a minor and the wide range of situations where a minor might be considered dependent, while ensuring that the decisive criterion is the best interest of the child. The practical cooperation foreseen can help MS better define the criteria for determining the best interests of the child.

6. ASSESSMENT OF IMPACTS

6.1. Main advantages

- By ensuring that the standards of the Directive are clear and adequate with a view to guarantee full compliance with international human rights and refugee law standards, the preferred option would attain **better respect for the right to asylum and more generally for fundamental rights, including the principle of non-discrimination.**
- By reducing room for uncertainty and administrative error these amendments would **streamline and enhance the quality, fairness, effectiveness and credibility of the asylum process.**
- By enhancing the consistent application of standards, these amendments would help **reduce secondary movements.**

6.2. Potential magnitude of financial impacts

6.2.1. Potential costs

Quantifying costs of changes to the CEAS is particularly difficult. The size or profile of influxes of refugees cannot be predicted from year to year and there exist no statistics on why certain applications have been accepted and others rejected. Protection is granted on a case-by-case basis, as the result of the analysis of the credibility and the individual circumstances of each applicant. Moreover, there is no information available on the overall costs of hosting beneficiaries of protection or of the individual rights they are granted. It is thus impossible to estimate how many applicants might actually be affected by amendments to the grounds of protection or to assess the effects of amendments to the rights granted to beneficiaries. Within the limits of these constraints, the following indications can be provided.

The 4 MS that would be potentially affected by the amendment to the notion "actors of protection" received in total in 2008 74 535 applications whereas the 8 MS that might be affected by the amendment to the notion "internal protection" received 81 575 applications. The 14 MS which would be affected by the amendment of the notion "particular social group" received in 2008 a total of 30 800 applications by women; the corresponding number in the 7 MS which would be affected by the amendment of the nexus requirement was 14 800. The introduction of exceptions to cessation would potentially affect 10 MS, which in 2008 applied cessation in 7 020 cases.

Overall impacts of the approximation of the two statuses will vary: some MS (such as IE, SE and UK) will practically not be affected at all, whilst a majority will need to eliminate the various differences they maintain. The obligation to provide beneficiaries of subsidiary protection with unconditional access to the labour market would affect CY, DE and LU, where the numbers of beneficiaries of subsidiary protection who would potentially benefit

from this amendment can be estimated at 445, 1,925 and 504 respectively, thus representing a percentage of 0.11%, 0.0046 %, and 0.23% of the labour force of these MS. The approximation of rights regarding social welfare would affect DE, LU, LV and PT whereas the approximation regarding healthcare would affect MT; beneficiaries of subsidiary protection hosted in these MS for the period 2005-2008 were 3,375, 340, 5, 95 and 3,010 respectively. The approximation regarding access to integration programmes might affect at least 8 MS where the total population of beneficiaries of subsidiary protection for the period 2005-2008 amounted to 5 495 persons, whereas the average per capita cost of integration programmes provided by one MS amounts to EUR 682.

The impact of enhanced access to procedures for the recognition of qualifications, employment support and integration programmes granted to beneficiaries of international protection should be limited. Beneficiaries of protection aged 15-64 recognised in EU between 2005 and 2008 are estimated at 245 132 and thus represent only 0.1% of the EU labour force, whereas persons granted protection in the EU in the same period represent only 1,07% of the EU population of third-country nationals. The total number of dependants of persons having received protection in 2005-2008 in the 14 MS which might be affected by the broadening of the definition of family members is estimated at less than 18 500.

The likely total administrative costs of the preferred option are estimated at EUR 3 094 407.

6.2.2. *Potential savings*

- By diminishing the impetus for asylum seekers to move, the preferred option can reduce asylum flows within the EU, and the costs for the implementation of the Dublin system.
- By shortening the duration of the first-instance procedure and reducing appeals, the preferred option can lead to administrative and financial savings: there are indications that appeals can double the cost of an asylum claim whereas an estimated 110 846 appeals were lodged in 2007. It would also reduce costs involved in reception services: on average, 1 reception year may cost EUR 11 000 per person whereas the average length of first instance procedures is 6 months and of appeal procedures is 1 year.
- As a result of the approximation of the rights attached to the two statuses, administrative procedures would be streamlined and costs associated with creating and maintaining different infrastructures would be eliminated.
- In the longer term, investments into integration support could be offset to a certain extent by the positive economic and social effects of sustainable employment and successful integration of beneficiaries (expected to occur more or less 2 years following the granting of protection).

National measures to implement the standards of the proposal are eligible for co-funding under the European Refugee Fund a level of 50% or 75%.

6.3. Social impacts and impacts on fundamental rights

The whole CEAS is based on the full and inclusive application of the Geneva Convention, the obligations that flow from human rights instruments such as the ECHR, and the full respect of the rights enshrined in the Charter of Fundamental Rights. The preferred option ensures that persons genuinely seeking protection in the EU are granted such protection on the basis of high standards and in line with these obligations. In particular, it enhances the access of

asylum seekers and beneficiaries of protection (and their family members) to protection and justice, to social integration and to the labour market, and ensures full respect of the principle of non-discrimination.

7. MONITORING AND EVALUATION

The IA sets out a number of indicators that can be used to assess the efficiency and effectiveness of the preferred option in achieving the main policy objectives and explains the arrangements for their collection and evaluation in particular for the purposes of preparing the regular reports on the application of the Directive. Furthermore, the Asylum Support Office will institutionalise a comprehensive sharing of information on asylum processing through formalised procedures and will ensure the systematic evaluation of the additional data collected.