

# Reform of the Qualification Directive

## OVERVIEW

The 2015 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.

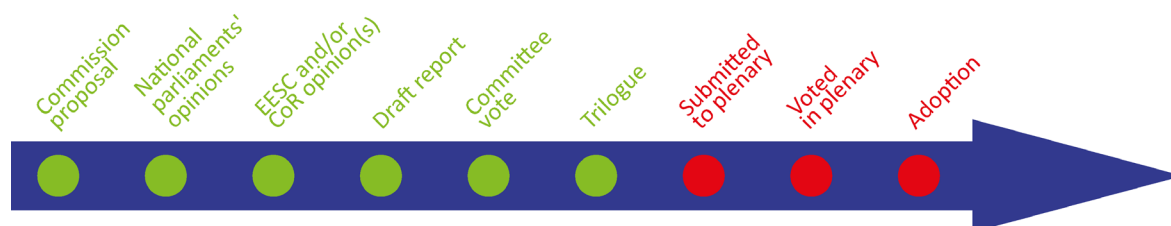
Although national asylum rules are more closely aligned than they were, major differences in approach persist across the EU. This can lead asylum-seekers to claim refuge in Member States whose asylum systems appear to be more generous, rather than in the Member State officially responsible for their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

The Parliament and the Council reached provisional agreement on the text in June 2018. After being blocked since 2018, the two institutions reached a final agreement on the regulation on 15 December 2022. However, the agreed text has not been formally adopted, pending progress on other related proposals in the asylum and migration field.

**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 (LIBE)	COM(2016) 466
<i>Rapporteur:</i>	Matjaž Nemec (S&D, Slovenia)	13.7.2016
<i>Shadow rapporteurs:</i>	Lena Düpont (EPP, Germany) Jan-Christoph Oetjen (Renew, Germany) Alice Kuhnke (Greens/EFA, Sweden) Assita Kanko (ECR, Belgium) Annalisa Tardino (ID, Italy) Miguel Urbán Crespo (The Left, Spain)	2016/0223(COD)  Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Final first-reading vote in plenary	



## Introduction

The unprecedented migratory pressure on Europe in the last decade has shown that there is a need for a comprehensive approach to migration management. The number of migrants lodging [asylum applications](#) in the EU reached a peak in 2015 and 2016 and has been on the rise again since 2020. On 13 May 2015, the Commission presented its [European Agenda on Migration](#) to address the challenges of managing migration flows more efficiently, in accordance with the principles of solidarity and shared responsibility. It 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.

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 Union Agency for Asylum](#) (EUAA) 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 included 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, [data](#) for 2016 show that the recognition rates for citizens of the same country of origin varied substantially between different EU Member States, even though all EU countries abide by the [1951 Refugee Convention](#) and the CEAS. The 2023 EUAA [report](#) shows that large differences in recognition rates for individual nationalities across EU countries still prevail.

As regards the differences between the types of protection status granted, the above data for 2016 reveal that, for example, Germany, Italy and France granted mostly [refugee status](#) to successful asylum-seekers from Syria, whereas Sweden and Hungary gave them [subsidiary protection](#) status in most cases.

Moreover, 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 on [Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#) (2015) showed diverging national policies as regards access to the labour market for beneficiaries of international protection.

According to the Commission's [evaluation of the application of the recast Qualification Directive](#), published in 2019, the current recast Qualification Directive has contributed in some areas to a higher level of approximation of the national rules, especially 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.

The study concluded that significant differences in the application of the Directive's articles were noted. Those related to the way facts and circumstances of applications were assessed (Article 4), the assessment of ['surplace'](#) applications (Article 5), of protection alternatives (Articles 7 and 8) and the application of cessation clauses (Articles 11 and 16). As regards aligning the content of rights granted to beneficiaries of subsidiary protection with those granted to refugees, some Member States continued to make a distinction between these rights in terms of granting of residence permits (Article 24), travel documents (Article 25), social assistance (Article 29), the type and quality of integration programmes (Article 34) and repatriation assistance (Article 35). Such differences were, on the one hand, the result of different interpretations of the provisions and, on the other hand, related to the extent to which Member States had transposed certain 'may-clauses' into national legislation. Furthermore, it seemed that the current provisions on cessation of refugee or subsidiary protection status were not systematically used in practice, which meant that Member States did not always ensure that international protection was granted only for as long as the risk of persecution or serious harm existed.

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 European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs study on [The Implementation of the Common European Asylum System \(2016\)](#) argued that, depending on their interpretation and application by Member States, there were provisions in the recast Qualification Directive that may still have given rise to protection gaps. This study also suggested that the current directive was not suited to situations of large-scale arrivals or able to prevent backlogs in asylum determination processing.

According to the Commission, the above challenges indicated 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, inter-cultural 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 United Nations 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 the above-mentioned external [study](#) in 2015 focusing on the application of the current recast Qualification Directive by the Member States, and on examining implementation problems, identifying shortcomings and assessing whether the current directive had led to greater convergence in Europe.

In addition to the study, relevant EUAA (previously EASO) publications 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 EUAA and the European networks on country of origin information;
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 harmonise 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 recommended:

- 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.

## Stakeholder views<sup>1</sup>

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 refugee status and subsidiary protection status: Articles 15 and 21 should be deleted, as periodic reviews of status do not guarantee alignment of standards, create significant administrative burdens, and put the residence status of large numbers of third-country nationals at risk.
- Duration of residence permit: The current wording of Article 24 of Directive 2011/95/EU should be retained, as changing it would create significant administrative burdens for Member States. Member States should preserve the freedom to decide on the duration of the residence permit.
- Freedom of movement: Article 28(2) – which allows for the imposition of a residence condition on international protection beneficiaries who receive social assistance, where such a condition is necessary to facilitate integration – should be deleted.
- The amendment of the Long-Term Residence Directive 2003/109: The proposed Article 44 – which introduces a new sanction in Directive 2003/109 in case the beneficiary is found in another Member State without the right to stay or reside there – should be amended.

The Jesuit Refugee Service (JRS) raised a number of [concerns](#) about the proposed Qualification Regulation, including the introduction of compulsory review of international protection status, the obligation to reside in the Member State which granted them protection, and the discretion afforded to Member States to compel beneficiaries of international protection to participate in integration measures.

## 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 **Council's** Asylum Working Party examined the Commission's proposal at its meetings on 27 and 28 October and 8 November 2016. 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).

After a year's meetings of the Justice and Home Affairs Council, on 19 July 2017, the Permanent Representatives Committee (Coreper) endorsed, on behalf of the Council, a [mandate](#) for negotiations on a regulation regarding the qualification standards, status and protection granted to refugees and persons eligible for subsidiary protection. The provisions containing cross-references to other proposals in the CEAS package and specific provisions, which needed further discussion in the Council preparatory bodies, were not included in this mandate and were agreed at a later stage.

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

On 5 July 2017, the Parliament confirmed a mandate to enter into interinstitutional negotiations with the Council on the basis of a [report](#), adopted by the LIBE committee on 15 June 2017. According to the report, which was adopted by 40 votes in favour, 13 against and 4 abstentions:

- Member States should apply common criteria for the identification of persons genuinely in need of international protection, and should ensure a common set of rights to refugees and beneficiaries of subsidiary protection;
- in case of lack of documentary or other evidence, applicants should be given the benefit of the doubt if they have made a genuine effort to substantiate their application and have submitted all relevant elements, and their statements are found to be coherent and plausible;
- the best interest of the child should be a primary consideration, especially when assessing conditions for protection;
- the applicant's participation in the activities of a terrorist group should be the basis for exclusion from the status;
- refugee status would be withdrawn if an applicant is a danger to the security of the Member State or if they have committed a serious non-political crime before arriving in the destination country;
- a residence permit must be issued no later than 15 days after international protection has been granted and should have a period of validity of at least five years.

The report also deletes the proposal for a mandatory refugee status review in the event of changed circumstances in the country of origin. The Parliament suggests that Member States should provide beneficiaries of international protection with support and opportunities for integration into their host society.

The **trilogues** between the Council and the Parliament started in September 2017. The first discussions highlighted aspects on which the two institutions' positions diverge:

- approximation of statuses and length of residence permits;
- internal protection alternative and its application;
- status reviews for beneficiaries of refugee and subsidiary protection statuses;
- the possibility for a beneficiary of international protection to remain on the territory of the Member State for three months after the withdrawal of the status on the basis of cessation ('grace period').

According to the Commission's [contribution](#) to a European Council debate on a way forward on the external and internal dimension of migration policy, a political agreement between the European Parliament and the Council was expected by March 2018. However, the trilogues proved difficult, especially as regards the mandatory vs optional use of the internal protection alternative, the mandatory vs optional nature of the review of the status, the definition of family members and the period of validity of residence permits.

On 14 June 2018, Parliament and Council negotiators reached a [provisional deal](#) on a new Qualification Regulation. According to the agreement, recognised refugees should get a minimum 3-year renewable residence permit, while beneficiaries of subsidiary protection should have the right to a 1-year permit, renewable for at least 2 years. If there is no longer a need for international protection or if the beneficiary is involved in terrorism or other serious crimes, authorities can withdraw the protection status. Review of the refugee status if there is a 'significant change in the country of origin' is no longer mandatory.

The definition of family members will include dependent adult children and families formed before arrival in the EU, not just those coming from the country of origin, while Member States can also include siblings if they so wish.

As the Council did not finally endorse the agreement, in 2018 the Austrian Presidency returned to negotiations at the technical level in the Council. In informal contacts with the Parliament, it became clear that the Parliament stood by the provisional agreement reached in June 2018 and did not wish to reopen negotiations.

The European Council [conclusions](#) of 13-14 December 2018 called 'for further efforts to conclude negotiations on all parts of the Common European Asylum System', while the European Commission, in a [communication](#) of 4 December 2018, called on the Member States and Parliament to transform the broad agreement already found on the proposal into final adoption.

More than four years after the provisional agreement, the Parliament and the Council reached a final agreement on the proposal on 15 December 2022, largely based on the text agreed in 2018. The [text](#) needs to be formally adopted by both institutions before it can be published in the Official Journal of the EU and enter into force. That step has yet to be taken, pending progress on other related proposals in the migration and asylum field. Member States will then have two years to transpose the provisions of the directive into their national laws.

In June 2022, the European Parliament and the rotating presidencies of the Council signed a [joint roadmap](#), declaring their plan to finish negotiating all the asylum and migration proposals currently on the table by February 2024, with the aim of having them enter into force by April 2024 at the latest.



## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Dumbrava C., Luyten K. and Orav A., [EU pact on migration and asylum – State of play](#), EPRS, European Parliament, June 2023.

Guild E. et al, [Enhancing the Common European Asylum System and Alternatives to Dublin](#), Study for the LIBE committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2015.

Wagner M., Baumgartner P., Dimitriadi A., O'Donnell R., Kraler A., Perumadan J., Schlotzhauer J., Simic I. and Yabasun D., [The Implementation of the Common European Asylum System](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2016.

## OTHER SOURCES

[Qualification Directive](#), Legislative Observatory (OEIL), European Parliament.

## ENDNOTES

- <sup>1</sup> 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 'European Parliament supporting analysis'.

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