



Discussion paper concerning recognition rates on Convention refugees and persons in need of protection in Member States and (the road towards) a common understanding of international protection

On October 31, 2001 the Commission proposed a Council Directive on minimum standards on the qualification and status of third country nationals and stateless persons as refugees and as persons otherwise in need of international protection (protection qualification directive).

In the proposal the Commission explains that the main aim of the proposal is "to ensure that a minimum level of protection is available in all Member States for those genuinely in need and to reduce disparities between Member States' legislation and practice in these areas. Any differences not solely connected with family, cultural or historical factors, likely to influence in one way or another the flows of asylum applicants, should as far as possible disappear between the Member States, where such movement is purely caused by differences in legal frameworks"¹.

Bearing this explanation in mind ministers are invited to discuss the desired level of an approximated protection regime.

1. A common refugee definition

One of the aims of the proposal is to limit secondary movements that are caused by differences in legislation and practice and subsequent differences in recognition rates. The differences in recognition rates become apparent when reading UNHCR statistics on recognition rates on refugee convention status and subsidiary protection status, which show that the rates vary significantly.

- *Do ministers share the view that an important cause of secondary movements is Member States' different legislation and practice and that an approximation of legislation as well as practice would be a relevant remedy?*

¹ Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM(2001)510 final).

Statistics show that a large percentage of the total number of persons granted protection status is granted subsidiary protection. The form and content of subsidiary protection granted by Member States is very different. These two pieces of information lead to the assumption that the existing variety of subsidiary protection influences secondary movements in a significant way.

- *Do ministers share the view of the Presidency, that the different forms of subsidiary protection in Member States constitute an important reason for secondary movements?*
- *Do ministers agree that this could be remedied/mitigated through an approximated definition of subsidiary protection?*

2. Non-state actors of persecution

In accordance with the 1996 EU Joint position on the harmonised application of the term “refugee” there is consensus among the Member States that persecution carried out by non-state actors, which is encouraged or permitted by the authorities constitutes persecution as defined in article 1 A of the Genève Convention.

However, Member States should still reach a common understanding as to whether persecution carried out by non-state actors, in the exceptional situation where the state is unable to provide protection, constitutes persecution as defined in article 1 A of the Genève Convention.

- *Do ministers agree that persecution carried out by non-state actors, in situations where the state is unable to provide protection, may constitute persecution as defined in article 1 A of the Genève Convention?*

3. Subsidiary protection

The directive on minimum standards on the qualification and status of third country nationals and stateless persons as refugees and as persons otherwise in need of international protection rightly acknowledges the primacy of the 1951 Convention relating to the Status of Refugees. Subsidiary protection should be seen as an important complement to refugee protection.

All Member States have developed additional or subsidiary forms of protection in order to provide protection to persons who are not covered by the Geneva Convention but who are still in need of protection.

There has been no co-ordination between the Member States as to the form and content of subsidiary protection with the result that the subsidiary protection regimes in the Member States are different.

Some Member States have developed wide definitions of subsidiary protection including for instance victims of civil war and victims of environmental disasters. Some Member States have formed their subsidiary protection regime in accordance with already existing international obligations.

- *Do ministers agree that the common definition of subsidiary protection should be based upon the international obligations of Member States as established by the European Court of Human Rights in relation to article 1 of protocol 6 and article 3 of the EHRC; and only be applied to third country nationals who due to a serious risk of facing acts mentioned in these articles are forced to leave or stay outside their countries of origin?*
- *Do ministers agree that the common definition of subsidiary protection should in addition be sufficiently flexible to adapt to the possible development of the international obligations of Member States, especially the development of the jurisprudence of the European Court of Human Rights?*