

Brussels, 16 June 2010

## **International protection for third country nationals: unsatisfying divergences in Member States' implementation of rules.**

*EU Member States have widely diverging interpretations of the so called Qualification Directive, which sets minimum standards for identification of people in need of international protection. In a follow-up report of the Directive, the European Commission identifies deficiencies in certain provisions as well as several issues of incomplete and/or incorrect transposition by EU Member States. Those deficiencies have led to lower protection standards than those established by the Directive, as well as disparities among Member States both in the granting of protection and in the form of the protection granted.*

*"The vagueness and the ambiguity of the standards set by the Directive have led to substantial discrepancies among national rules. The Commission evaluated and proposed amendments to the Directive in October 2009, in order to reduce the risk for further diverging interpretations among Member States. I now call on the European Parliament and the Council to adopt those amendments",* said European Commissioner for Home Affairs Cecilia Malmström. She added: *"The Commission will continue to examine and pursue all cases where problems of transposition and/or implementation have been identified in order to ensure correct application of the common standards set by the Directive."*

The Qualification Directive ([2004/83/EC](#)) was designed to define common criteria for the identification of persons in need of international protection and to ensure that at least a minimum level of benefits is available for these persons in all Member States. The Commission report on its implementation highlights that the level of protection granted differs among Member States, affecting asylum flows. Several issues of incomplete and/or incorrect transposition of the Directive have also been identified.

Vagueness and ambiguity of several concepts in the Directive leaves room for widely divergent interpretations by Member States; an important share of decisions taken on individual cases are overturned on appeal, as they are based on criteria which are insufficiently clear and precise.

On the basis of a thorough evaluation of the implementation of the Directive, the Commission adopted on 21 October 2009 a proposal to recast the Qualification Directive. The proposed amendments are to remedy to the identified deficiencies, which are due to the imprecision of the standards themselves.

## Background

Member States had to transpose the Directive by 10 October 2006. Following expiry of the deadline for transposition, infringement procedures were opened against all Member States which failed to communicate or to fully communicate their transposition measures. Subsequently, in accordance with Article 226 of the Treaty, the Commission addressed 19 letters of formal notice and 13 reasoned opinions. The decision to bring the cases before the Court of Justice was taken against nine Member States. Five cases were withdrawn<sup>1</sup> and judgments were given for four<sup>2</sup>. At present, all Member States have communicated that they have transposed the Directive<sup>3</sup>.

On 21 October 2009, the Commission presented a proposal for the amendment of the Qualification Directive, with the aim of:

- **clarifying** certain legal concepts used to define the grounds for protection, such as "actors of protection", "internal protection" or "membership of a particular social group". For instance, gender issues will be better taken into account while assessing an application. These clarifications will enable national authorities to apply the criteria more robustly and to identify more quickly persons in need of protection and those who are not;
- **eliminating** the differences in the level of rights granted to refugees and beneficiaries of subsidiary protection which can no longer be considered as justified. The amendments concern the duration of residence permits, access to social welfare, health care and the labour market.
- **enhancing** effective access to rights already granted by the Directive by taking into account the specific integration challenges faced by beneficiaries of international protection. For instance, they cannot ask the authorities of their country for documentary evidence of their academic and professional qualifications. Accordingly, the proposal seeks to help them overcome such practical obstacles, by facilitating the recognition of their qualifications, their access to vocational training as well as to integration facilities.

## For more information

Homepage of Cecilia Malmström, Commissioner for Home Affairs:

[http://ec.europa.eu/commission\\_2010-2014/malmstrom/welcome/default\\_en.htm](http://ec.europa.eu/commission_2010-2014/malmstrom/welcome/default_en.htm)

Justice and Home Affairs Newsroom:

[http://ec.europa.eu/justice\\_home/news/intro/news\\_intro\\_en.htm](http://ec.europa.eu/justice_home/news/intro/news_intro_en.htm)

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<sup>1</sup> Cases C-2008/220, C-2008/190, C-2008/19, C-2008/269, C-2008/543

<sup>2</sup> Case C-293/08, judgment of 5.02.2009, *Commission v Finland*; Case C-256/08, judgment of 30.04.2009, *Commission v United Kingdom*; C-322/08, judgment of 14.05.2009, *Commission v Sweden*; C-272/08, judgment of 9.07.2009, *Commission v Spain*

<sup>3</sup> SE was the last Member State to fully transpose the Directive by a law which entered into force on 01 January 2010