

Brussels, 30 April 2004

Commission welcomes Council's agreement on Common European Asylum System

The Council today formally adopted the Directive on a common definition of who is a refugee or otherwise requires international protection and the rights and benefits which attach to each status (the Qualification Directive). The Council also reached political agreement on the Asylum Procedures Directive, in which Member States take a common approach to processing asylum applications in the EU. These Directives, together with the other legislative instruments on asylum already adopted by the Council guarantee a minimum level of protection and procedural safeguards in all Member States for those who are genuinely in need of international protection, whilst preventing abuses of asylum applications which undermine the credibility of the system.

Welcoming the agreement, Commissioner for Justice and Home Affairs António Vitorino said: "Together with the formal adoption of the Qualification Directive, the agreement reached by the Council on the Asylum Procedures Directive effectively means that **the first phase of the Common European Asylum System has now been established.**" He also said: "The importance of this agreement cannot be underestimated. Both Directives will significantly contribute to a **common approach across all 25 EU Member States.** The Directives will promote mutual confidence in Member States' asylum systems in the EU where only one Member State will be responsible for a particular application".

The Commissioner further commented that the agreement of the two Directives would enable further approximation of Member States' legislation and practice in this area, which will now be governed by the rules of qualified majority voting and will include co-decision with the European Parliament.

The Asylum Procedures Directive

The Directive will ensure that throughout the EU, all procedures at first instance are subject to the same minimum standards, while maintaining consistency with international obligations in this field. Accelerated and regular procedures provide the same safeguards for applicants and the Directive is flexible enough to allow Member States to tackle fraud and misuse of their systems.

The Directive also seeks to harmonise as much as possible national measures to speed up the examination of asylum applications and also that all negative decisions on asylum applications have the possibility of judicial scrutiny.

The Directive guarantees the right to be invited to an interview for asylum applicants as well as the basic principles and guarantees for the examination of claims. The introduction of the principle of effective remedy will also send an important signal to national judges. The European Court of Justice will ultimately rule on the interpretation of these provisions by Member States. The Directive also provides for exceptions for unfounded cases which will help resources focus on more deserving cases.

The Qualification Directive

The adoption of the 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 (the Qualification Directive) constitutes an important milestone in the development of a common approach to asylum in the EU. The Directive contains a clear set of criteria for qualifying either for refugee or subsidiary protection status, and sets out what rights are attached to each status.

A harmonised regime for subsidiary protection at EU level for those persons outside the scope of the Refugee Convention but still in need of international protection, such as victims of generalised violence or civil war, is of paramount importance given the increasing numbers of persons in need of that type of protection in the Member States.

The Directive also clarifies that in the determination of protection status the actor of persecution is irrelevant and can include non-state actors such as militia. This goes some way to reducing the differences in interpretation of the Convention which existed in Member States up till now.

Importantly the Directive also allows for the recognition as a refugee of those persons who have a well founded fear of being persecuted on account of their sexual orientation or gender.

The Directive also contains measures to combat misuse of asylum systems of Member states. It is particularly clear that the EU should not become a safe haven for terrorists who apply for asylum. Tough clauses on exclusion from both refugee status and subsidiary protection status are included in the Directive to prevent the abuse of asylum systems by those who could be a threat to the security of the EU or who have committed serious crimes.

Background - History and context of the Directives

The Qualification and the Procedures Directives are based on Article 63(1) (c) and (d) of the Treaty establishing the European Community. The Directives are binding for current and new Member States except for Denmark (according to a protocol attached to the Treaty Denmark is not bound by the measures taken under title IV of the Treaty).

The proposals for the two Directives by the Commission were included in the *Scoreboard to review progress on the creation of an area of freedom, security and justice in the European Union* adopted by the Commission on 24 March 2000 and approved by the Council. The proposals addressed directly the conclusions of the extraordinary European Council in Tampere of 15-16 October 1999, which called for the establishment of a Common European Asylum System which *should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.*

On 11 December 2000, the Council adopted a Regulation (2725/2000/EC) concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention on the State responsible for examining applications for asylum lodged in one of the European Union Member States.

On 20 July 2001, the Council adopted a Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;

On 27 January 2003, the Council adopted a Directive on minimum standards on the reception of applicants for asylum in Member States.

On 18 February the Council adopted a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.