

The Qualification Directive

Asylum in Europe
Now, it's up to you.



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 and the content of the protection granted

The purpose of the Qualification Directive is to harmonise the criteria by which Member States define who qualifies as a refugee, as well as other forms of protection for persons who face serious risks in their country of origin (subsidiary protection). The original objective of the Directive is to ensure that persons fleeing persecution are identified and have access to the same level of protection, regardless of the Member State where they lodge their asylum application. The Qualification Directive has not achieved its objectives. UNHCR and ECRE's studies on the application of this Directive clearly demonstrated that the possibility of finding protection varies dramatically from one Member State to another. At present, the Directive allows for extensive divergence in practice among Member States, undermining not only the EU's harmonization objective, but also the rights of people needing protection. It is imperative to guarantee that people fleeing persecution can find protection and enjoy the same level of rights across Europe.

A person's chances of being granted asylum still vary hugely according to the country processing the asylum claim reflecting the continued differences of Member States approaches to assessing protection needs. For instance, in 2008, virtually no Iraqis were recognised as refugees in Greece, while in Germany, 91% of Iraqi asylum-seekers were given international protection.

What matters

- **Conditions for granting refugee status should be harmonised at a higher level**

Despite the adoption of the Directive, there are still very different interpretations of the refugee definition across the EU. Certain provisions of the Directive should be amended to ensure that the right to seek and enjoy asylum is applied according to the same high standards in all Member States.

 - The current provisions on "actors of protection" are a source of particular concern as they inappropriately envisage that a militia or a clan can provide protection to a person in the same way as a State.
 - The notion of "internal protection" in the country of origin is also problematic. There is no guarantee that people can safely access an area in their country of origin where they would not be at risk, as required by the European Court of Human Rights.
 - Finally, persons who do not meet all the conditions to be recognised as a refugee may nonetheless need protection (so called subsidiary protection). Persons fleeing a situation of "indiscriminate violence" should not have to demonstrate that this violence is directed at them as individuals. Generalised violence in some countries is so serious that it should be a sufficient argument to be granted protection.
- **Refugee status should only end when all reasons for persecution have ceased**

Refugees may cease to need protection when the circumstances in the country of origin which led to the granting of protection have ceased to exist or have changed fundamentally. The so-called cessation clauses included in the Directive should be amended to be fully consistent with the 1951 Refugee Convention. They should include exceptions to cessation of refugee status when the person faces new threats of persecution despite the change of situation in the country of origin.
- **Reasons for refusing refugee status to persons who have committed crimes should be more closely aligned with international law**

The 1951 Refugee Convention sets out the circumstances in which States may exclude persons from refugee status because the crimes they have committed are so serious that they do not deserve protection (so-called "exclusion clause"). Provisions on exclusion in the Directive require amendment so that the Directive does not go beyond the exhaustive criteria for exclusion as set in the 1951 Refugee Convention.
- **Persons fleeing persecution and other forms of serious harm should have access to an equivalent level of rights**

Refugees and other persons needing protection are often fleeing equally serious situations and for long periods of time. Their rights should be equivalent.
- **Applicants should enjoy the benefit of the doubt**

Accelerated procedures appear to be based on a 'culture of disbelief' whereby most asylum seekers are presumed to be abusing the system. The focus should be on fair and efficient procedures able to identify persons in need of protection. Lack of documents or late submission of claims should not automatically be considered as evidence of insufficient cooperation or lack of credibility.

