

Brussels, 30/06/2010
C/2010/4426

Dear President,

The Commission thanks the Senate of the Czech Republic for its opinion of 17th March 2010 on the Commission proposal for a Directive of the European Parliament and of the Council on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Beneficiaries of International Protection and the Content of the Protection Granted {COM(2009)551}.

In line with the Commission's decision to encourage national Parliaments to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response and hope that these clarifications satisfactorily address the concerns expressed in your submission.

Yours sincerely,

/-/ Maroš Šefčovič

Mr. Přemysl Sobotka
President of the Senate
of the Parliament of the Czech Republic

reakcekomise@senat.cz



EUROPEAN COMMISSION

**COMMENTS OF THE EUROPEAN COMMISSION ON A RESOLUTION FROM
THE CZECH SENATE**

**COM(2009)551 – PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL ON MINIMUM STANDARDS FOR THE
QUALIFICATION AND STATUS OF THIRD COUNTRY NATIONALS OR
STATELESS PERSONS AS BENEFICIARIES OF INTERNATIONAL PROTECTION
AND THE CONTENT OF THE PROTECTION GRANTED {SEC(2009) 1373}
{SEC(2009) 1374} {SEC(2009) 1375}.**

The proposal aims to ensure higher and more harmonised standards of protection for asylum applicants as well as to increase the efficiency of the asylum system. These objectives are fully in line with the Commission's Policy Plan on Asylum of June 2008, in which the Commission commits itself to establishing a level playing field on asylum in the EU, ensuring that asylum seekers will be treated in the same way, with the same high-standard guarantees and procedures, wherever in the EU they make their asylum claim.

The proposal corresponds to the European Pact on Immigration and Asylum¹, which invited the Commission to present proposals for establishing, in 2010 if possible and in 2012 at the latest, a single asylum procedure comprising common guarantees and for adopting a uniform status for refugees and the beneficiaries of subsidiary protection. It also corresponds to the Stockholm Programme², adopted by the European Council of 11-12 December 2009, in which Member States reconfirm their commitment to establishing a Common European Asylum System (CEAS) 'based on a common asylum procedure and a uniform status for those granted international protection' and where individuals are offered an equivalent level of treatment as regards status determination.

The Senate indicates that certain insufficiencies of the current standards set out in the Qualification Directive may create problems for the assessment of applications for international protection. In the Impact Assessment³ carried out for the purpose of the recast of the Qualification Directive, the Commission concluded as well that certain minimum standards adopted are vague, ambiguous and give rise to wide divergences of interpretation. As a result, they are insufficient to secure full compatibility with the evolving human rights and refugee law standards, they have not achieved a sufficient level of harmonisation and they impact negatively on the quality and efficiency of decision-making. To address such disparities, recognised also by the European Council in the Stockholm Programme, the

¹ European Pact on Immigration and Asylum, 16 October 2008

² The Stockholm Programme – An open and secure Europe serving and protecting the citizens, 2 December 2009, 17024/09

³ SEC(2009) 1374

Commission proposed therefore the recast of the Qualification Directive. It expects the proposed amendments to clarify and consolidate the legal standards and lead to more robust determinations at first instance, thus improving the efficiency of the asylum process and preventing fraud, and to ensure coherence with the case-law of the European Court of Justice and the European Court of Human Rights.

The Commission agrees with the Senate's opinion that the recast should be based on a thorough evaluation of the existing instrument. The Commission confirms that it has at its disposal a large amount of information regarding the implementation of the Directive, including extensive information on the deficiencies concerning the terms of the Directive and the manner in which it is applied in practice. The Commission collected information about the transposition and implementation of the Directive through its regular monitoring activities, starting with the formal notification by Member States of the laws, regulations and administrative provisions adopted to comply with the Directive. In response to the Green Paper presented in June 2007 in order to identify possible options for shaping the second phase of the CEAS, the Commission received contributions from a wide range of relevant stakeholders, including a significant number of Member States and NGOs.

The Commission also took into account several studies and reports produced by UNHCR and different NGOs, as well as the academic network Odysseus, which evaluated the implementation of the Directive. Further data was collected in response to detailed questionnaires addressed by the Commission to all Member States and to civil society. Additionally, the Commission organised several experts' meetings to discuss possible amendments to the Directive: experts from Member States, NGOs, judges, academics, UNHCR. Moreover, an external study was conducted on behalf of the Commission, analysing the existing evidence and results of consultations and questionnaires, for the purpose of the preparation of the Impact Assessment accompanying this proposal. Based on a careful assessment of all the information obtained by all the abovementioned means, the Commission also produced a report on the evaluation of the Qualification Directive and it intends to present it in the course of the first semester of 2010.

The Senate finally considers that, due to their different logic, there should be a clear distinction between refugee status and subsidiary protection status entailing different rights for the two categories. In this respect, the Commission underlines that the proposal to recast the Qualification Directive aims to give effect to the call of the European Council for a uniform protection status, as stated in the Hague Programme and confirmed by the European Pact on Immigration and Asylum as well as the Stockholm Programme. The approximation of the rights granted to the two categories of beneficiaries of international protection will streamline procedures and reduce administrative costs and burdens associated with maintaining two protection statuses. The national authorities will no longer need to apply distinct conditions and procedures for issuing residence permits and travel documents and for granting access to employment, social welfare, healthcare and benefits for family members and to integration programmes. Relevant administrative procedures will be streamlined and costs associated with creating and maintaining different infrastructures will be reduced, as observed in the Member States which have already approximated the two protection statuses.

Moreover, practical experience has shown that the initial assumption that the subsidiary protection status was of a temporary nature was not accurate and that protection needs of beneficiaries of subsidiary protection are of a similar duration as those of refugees. Therefore, the proposed approximation of the rights of beneficiaries of subsidiary protection with those of refugees addresses solely the differences of treatment which may no longer be considered as objectively justified in light of the principle of non-discrimination. In this respect, the

European Court of Human Rights⁴ ruled that a difference of treatment between holders of different categories of residence permits is discriminatory if it has no objective and reasonable justification. However, further differences between the refugee and the subsidiary protection statuses, linked to the different grounds on which they are granted as well as to their different historical and legal origins, remain intact, for instance as regards the type of travel documents to be issued or the grounds for exclusion.

⁴ Judgments of 15 February 2006 in cases *Niedzwiecki v Germany* and *Okpiz v Germany*.