

Brussels, 28 AVR. 2010  
C/2010/ 2508

Dear Lord Roper,

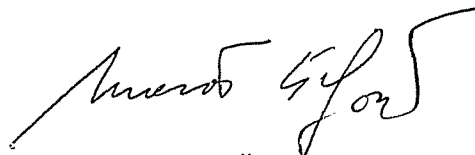
Thank you for sending us the Report on "Asylum directives: scrutiny of the opt-in decisions" drawn up by the European Union Committee of the House of Lords {COM(2009)551-554}.

I take this opportunity to thank the European Union Committee of the House of Lords once again for its continuous interest in this matter and its constructive contribution to the debate. The Commission will take this proposal forward and will carefully consider the view expressed by the Committee in this report.

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 reply and hope you will find this a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

Yours sincerely,



Maroš Šefčovič  
Vice-President of the European Commission

Lord Roper  
Chairman of the European Union Select Committee  
House of Lords  
Palace of Westminster  
UK-London SW1A 0PW



EUROPEAN COMMISSION

**COMMENTS OF THE EUROPEAN COMMISSION ON THE REPORT OF THE HOUSE OF LORDS ON THE ASYLUM PROCEDURES DIRECTIVE {COM(2009)551} AND THE QUALIFICATION DIRECTIVE {COM(2009)554}**

The European Commission welcomes the European Union Committee of the House of Lords for its report of 4 December 2009 entitled "Asylum directives: scrutiny of the opt-in decisions".

The report considers the recent Commission proposals to amend [recast] the Asylum Procedures Directive<sup>1</sup> and the Qualification Directive<sup>2</sup>, welcoming these measures and urging the UK Government to opt in to both. It also highlights certain legal issues which may arise should the UK choose to refrain from doing so.

The Commission welcomes the adoption of this report by the Committee as well as its decision to recommend the UK Government to opt in to the amendments of both Directives.

Both proposals aim 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 proposals also correspond to the Stockholm Programme, 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) where individuals 'are offered an equivalent level of treatment as regards reception conditions, and the same level as regards procedural arrangements and status determination.' The participation of all Member States in the further elaboration of common standards during the second phase of development of the CEAS is highly desirable if the aforementioned policy objectives are to be achieved.

As the Committee notes in its report, the legislative measures making up the CEAS 'are intended to form a coherent whole'. The Commission proposals to amend the Qualification and Procedures Directives should therefore be seen as complementing the earlier proposals to

---

<sup>1</sup> Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast), COM(2009) 551 final, 21.10.2009

<sup>2</sup> 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 (Recast), COM(2009) 554 final, 21.10.2009

modify other existing instruments of the CEAS, notably the proposals of 3 December 2009 to amend the Reception Conditions Directive<sup>3</sup> and the Dublin Regulation<sup>4</sup>.

On 6 March 2009, the UK Government informed the Council that it would not opt in to the Commission's proposal to amend the Reception Conditions Directive, which is an instrument of fundamental importance for the CEAS. However, at the same time the UK signalled its intention to opt in to the proposal amending the Dublin Regulation and continue its participation in the Dublin system which has since 2003 permitted the UK to transfer significant numbers of asylum seekers to other EU Member States.

In a letter of 22 January 2010, UK Home Secretary Alan Johnson informed the Commission that the UK would not opt in to the Commission proposals to amend the Qualification and Procedures directives. Like the Reception Conditions Directive, these two instruments represent fundamental building blocks of the EU's common asylum system. This decision by the UK to refrain from opting in to the proposed amendments to both Directives whilst continuing its participation in other instruments of the EU asylum acquis therefore raises serious concerns on the future integrity of the CEAS.

Regarding the specific content of the Commission's proposals to amend the Qualification and Procedures Directives, the Commission is pleased to note that whilst mentioning certain concerns expressed by the UK Government on specific provisions of the proposals, the report expresses the Committee's general support for both texts. The Commission would nevertheless like to provide some further information to the Committee on the provisions on which criticisms were raised.

First, regarding the proposal to amend the Qualification Directive, the report notes that Article 2 which extends the definition of family members 'is of particular concern'. The Commission wishes to underline that the proposed extension of this definition is limited in scope. It takes into account only cases where a beneficiary of international protection is a minor and aims to cover a range of situations where a minor might be dependent, while ensuring that the decisive criterion is the best interest of the child. Furthermore, the definition of family members in this Directive is not to be used for purposes of family reunification, which falls outside the scope of the Qualification Directive, but only for the maintaining of family unity for family members of recognised beneficiaries of international protection already present on the territory of Member States.

Second, the report mentions reservations concerning Article 7 of the proposal to amend the Qualification Directive, which requires Member States to demonstrate that non-State agents who may offer protection are willing and able to enforce the rule of law. This clarification of the legal concept of 'actors of protection' was judged necessary as the Directive's current wording has produced wide divergences in its implementation by Member States. Furthermore, some Member States have adopted very broad interpretations of this term which may fall short of the standards set by the Geneva Convention on what constitutes adequate protection. It also aims at ensuring internal coherence with the current Article 7(2) which requires the operation of an effective legal system by the actors of protection and that the applicant has access to protection.

---

<sup>3</sup> Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast), COM(2008) 815 final, 2.12.2008

<sup>4</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member states by a third-country national or a stateless person (Recast), COM(2008) 820 final, 3.12.2008

Third, the report mentions certain reservations concerning the proposed amendments to Articles 11 and 16 of the Qualification Directive, which introduce derogations from the cessation clauses for persons who can invoke 'compelling reasons arising out of previous persecution'. The Commission wishes to point out that the derogation introduced by the new Article 11(3) of the proposal aims to incorporate into the Qualification Directive Article 1(C)(5) of the Geneva Convention which reflects a general humanitarian principle. Article 16(3) of the proposal introduces this exception also for beneficiaries of subsidiary protection.

Regarding the Commission's proposal to amend the Procedures Directive, the report mentions concerns expressed by the UK Government that the proposal would 'work against Member States' ability to tackle abuses of the asylum system'. In this context, reference is made in particular to Articles 27 of the proposal, which introduces new requirements for accelerated procedures, and Article 41, which provides for rules on suspensive effect of appeals.

The Commission wishes to underline that the overall aim of the proposal to amend the Procedures Directive is to further improve the efficiency and quality of asylum decision-making by encouraging Member State administrative authorities to "frontload" services, advice and expertise. This should *inter alia* allow Member States to distinguish more efficiently between asylum seekers and other migrants, facilitate the identification of cases of unfounded and abusive applications, and reject subsequent asylum applications as inadmissible in accordance with the *res judicata* principle, thereby reducing reception costs. As a result, Member States will be able to deliver more robust determinations at first instance, thus discouraging abuse of procedures and improving the defendability of negative decisions which will be less likely to be overturned by appeal bodies.

In the Commission's view, Article 27 of the proposal leaves to Member States a sufficient margin of flexibility to quickly examine unfounded or abusive applications, since the proposed provisions allow Member States to prioritise the examination of any application. Moreover, the proposal requires Member States to take a decision as soon as possible, and introduces time limits for completing first instance procedures. At the same time, the proposal provides for necessary safeguards aimed at ensuring rigorous scrutiny of applications and limiting room for administrative errors.

As regards Article 41 of the proposal, the Commission wishes to underline that the proposed rules on suspensive effect of appeals are largely inspired by the evolving case law of the European Court of Human Rights regarding access to an effective remedy. The envisaged standards are therefore indispensable for ensuring that the EU framework on procedures for granting international protection is fully in line with fundamental rights which, as repeatedly stressed by the Court of Justice, form an integral part of the general principles of EU law.