



## Statewatch Analysis

### The Revised Directive on Asylum-seekers' Reception Conditions: The Member States hit rock-bottom

Steve Peers  
Professor of Law, Law School, University of Essex

#### Introduction

As part of the project to create a 'Common European Asylum System', the EU adopted legislation between 2003 and 2005 on four key issues: the definition (ie, 'qualification') for refugee status; asylum procedures; reception conditions for asylum-seekers (dealing with issues like their welfare and employment); and responsibility for asylum-seekers (ie the 'Dublin' rules, which in principle require asylum-seekers to apply in one Member State only, which is determined by those rules).

These measures were considered to form the 'first phase' of the Common European Asylum System, and the EU's Hague Programme, which set out an agenda for the development of EU Justice and Home Affairs Law from 2005-2010, set the objective of adopting legislation establishing the second phase of the Common European Asylum System by 2010. This deadline was later extended to 2012, but obviously even this later deadline will soon expire.

The European Commission then tabled in 2008 and 2009 proposals to revise all of the four key measures referred to above. The European Parliament (EP) and the Council agreed in mid-2011 on the revision of the Qualification Directive, which was then officially adopted in November 2011. However, the Council had difficulty agreeing on how to revise the other rules, so in June 2011 the Commission tabled amended proposals for the Directives on reception conditions and asylum procedures, in order to restart discussions.

In the June 2011 Statewatch analysis of these proposals, it was argued that taken as a whole, the amended proposals would not require Member States to raise their standards very much, in particular to the extent that raising those standards would cost money. If these Directives were adopted as then proposed, the second phase of the Common European Asylum System would therefore look a lot like the first phase. There would be largely cosmetic

changes to the current inadequate standards. To borrow President Obama's phrase, this would be like putting 'lipstick on a pig'.

The discussions on the reception conditions proposal are at or near the end in the Council (made up of Member States' interior ministers). In February 2012, a further Statewatch analysis examined the proposed deal on this Directive first submitted to the Member States' representatives to the EU (known as 'Coreper'). Coreper has since been asked to examine a second and third draft final compromise proposal (on March 14<sup>th</sup> and 21<sup>st</sup> respectively). It is not yet known whether the March 21<sup>st</sup> discussions resulted in agreement (a qualified majority of participating Member States is needed, and then the text will have to be agreed with the European Parliament), but this is an opportune time for a further updated analysis of the latest drafts.

### The reception conditions Directive

'Reception conditions' are the rules which apply to asylum-seekers when their claims for asylum are being considered, other than the rules related to their asylum claim as such. They include rules on access to health care, housing, employment, social assistance and education.

The current EU rules on this subject are set out in Directive 2003/9 (the '2003 Directive'), which applies to all Member States except Denmark and Ireland. The UK has opted out of the 2008 proposal (as revised in 2011) to amend these rules, but the 2003 Directive will continue to apply to the UK regardless.

The June 2011 and February 2012 Statewatch analyses examined the changes which had been suggested or negotiated up until then. As pointed out then (see the two prior analyses for more detail), the February 2012 compromise proposal would only have improved standards a little compared to the 2003 Directive, in particular regarding: the extension of the scope of the Directive to applicants for subsidiary protection; a limited extension of the definition of 'family members'; a confirmation that the Directive applies to territorial waters and transit zones; rules on detention of asylum-seekers for the first time, although these were quite flawed; improved rules on access to education; some improvement in access to employment, in particular a shorter waiting period (6 months instead of 12 months), subject to various exceptions and conditions; and some modest changes to the rules on social welfare, reduction of benefits, vulnerable persons and appeals.

The discussions in Coreper since that point have resulted in a further reduction of standards. The changes have concerned five key issues, as follows:

a) the grounds for detention. While the Danish Presidency's first compromise proposal would have dropped a far-reaching additional ground for detaining asylum-seekers, some Member States were dissatisfied with

this, and so the 21 March draft re-introduces a revised version of this extra possibility (Article 8(3)(d), first sub-paragraph).

b) the rules on social welfare for asylum-seekers. To satisfy Member States, the March 21 draft drops the requirement that lower rates of social welfare for asylum-seekers as compared to nationals must be 'duly justified' and refers only to 'levels' of support rather than 'points of reference' (Article 17(5)).

c) the rules on vulnerable persons. The Commission had proposed a process to screen asylum-seekers to see if they were vulnerable, for instance because they are children or elderly, or have suffered torture or rape. Since the March 14 draft, the compromise proposal has dropped this requirement, retaining only the requirement to assess whether vulnerable persons had special reception needs (Article 22). But it will often not be self-evident whether a person is vulnerable. So the text now adds little or nothing to the 2003 Directive on this point.

d) the rules on legal aid. The February compromise draft had already contained a large number of limits and conditions on legal aid as regards appeals concerning benefits, but the March 21 draft adds further conditions, specifying that: legal aid need only be granted if this is necessary in the interests of justice; legal aid must be 'made available', rather than 'granted'; the need for legal aid would not have to be assessed by a judicial authority; and there is a broader measure of comparison between asylum-seekers and nationals as regards legal aid (Article 26).

e) the rules on access to employment. At the behest of Member States, the March 14<sup>th</sup> draft reverted back to the rule in the 2003 Directive that asylum-seekers would have a waiting period of up to 12 months for access to employment. The March 21<sup>st</sup> draft then also re-inserted the possibility of EU preference from the 2003 Directive (Article 15). So there is now no real improvement of the minimum standards on the issue of access to employment.

## Conclusion

The preamble to the proposal (recital 5) refers to the principles set out in the Stockholm programme: the adoption of 'high protection standards' by the EU and the belief that 'it is crucial that individuals, regardless of the Member State in which their application for asylum is made, are offered an equivalent level of treatment as regards reception conditions'.

However, the latest draft of the Directive clearly fails on both counts. On the key issues of employment and social welfare, there is now no measurable change from the 2003 Directive. Similarly, the modest improvements in the rules on vulnerable persons are undercut by the absence of any requirement to identify such persons. And if Member States do manage to breach their limited obligations under the Directive, it will be easy to deny legal aid to any asylum-seeker who might wish to enforce his or

her rights. The Directive would still impose rules on the detention of asylum-seekers for the first time, but there would be broad grounds to detain them, no time limit on detention and worrying exceptions as regards privacy for detained families and the safety of female asylum-seekers.

Member States have genuinely hit rock bottom. It now remains to be seen whether the European Parliament might have any success in convincing them to raise standards a few millimetres more.

March 2012

### Sources

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