

The Qualification Regulation - a mixed bag, inherited from 2016

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Is the regulation part of the Pact?

The New Pact on Migration and Asylum was proposed in September 2020 - qualification was **NOT part of the Pact.**

but

A **2016 proposal** (COM (2016) 466) submitted in the wake of the large scale arrivals in 2015 **was reheated** – provisional agreement on its content was achieved in December 2022, political agreement in December 2023.

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on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council

Scope:
Only EU MS,
Denmark out,
Ireland in.

Territorial scope:
Undefined

Applicable from
1 July 2026

The aim of this short talk and the assumptions

Aim:

- **Not a complete** overview
- Presentation of the most important **changes**
- Classifying them into **good, bad and mixed** from the point of view of the person in need of protection

Assumption:

The audience is **familiar with the Qualification directive (2011/95/EU)** in force until 2026

The roots of the regulation and its purpose

Roots

- The lessons learnt from the application of the 2011 directive.
Divergence in recognition rates, interpretation of terms, COI use, difficult access to rights – to name some
- The collapse of the whole EU asylum system in 2015 and the ensuing **fears related to irregular migration** motivating the adoption of the New Pact in 2020

Purpose

Harmonisation → Member States apply common criteria + common set of rights for recognised persons. → Higher degree of legal certainty and transparency → Equal treatment across the EU → Decrease of secondary movements.



Regulation is the adequate form

New rules favouring the beneficiaries of protection.

I. Criteria

Family – could be **formed after departure** from country of origin

Broader circle – adult dependent child, adult sibling of a minor

Gender



increased attention

Minors

(take into account in relation to internal protection alternative, gender expression not only identity, no intrusive questioning and tests, requirements on guardian/representative)

See further the presentation of Catherine Warin and Valeria Ilareva, next!

No self-denial or discretion! (PSG)

§10/3: „the determining authority cannot reasonably expect [an] applicant to adapt or change his or her behaviour, convictions or identity, or to abstain from certain practices, ... to avoid the risk of persecution in his or her country of origin.”

New rules favouring the beneficiaries of protection.

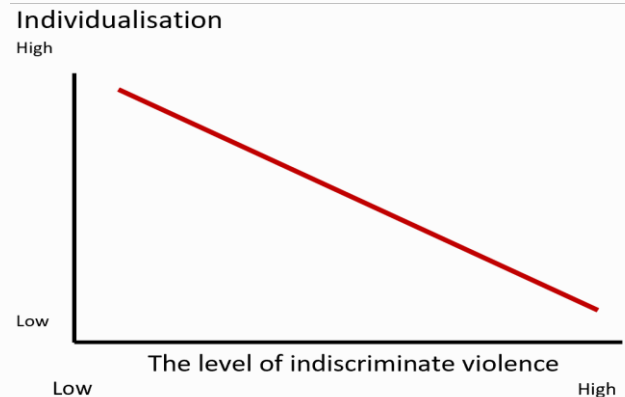
I. Criteria

Subsidiary protection

ECJ practice incorporated concerning 15/c (Recitals 50-52)

Indiscriminate violence: *Elgafaji case*:

tradeoff between
level of violence and
personal circumstances



Armed conflict: *Diakite*

much broader meaning than in international
humanitarian law

Stateless persons of Palestinian origin

Recital 62 incorporates the set of ECJ judgments on when
protection by UNRWA ceases


New rules favouring the beneficiaries of protection.

II. Rights

Information

New Annex I – detailed info on practical realisation of rights to be provided

Residence permits

- To be issued ASAP, max 90 days from recognition
 - Same validity as the protected persons
 - Fee: max as nationals, preferably free
 - Smooth continuity
- 
- Length may still differ: Ref: 3 years BSP: 1 year

Limiting the rights, increasing the burdens

Marriage/partnership of convenience

if indications that the sole purpose is enabling entry or residence → **states must deny residence permit**

Married minor:

- Spouse may be denied residence rights
- The married minor can be regarded as unmarried if younger than the national minimum age

Recogniton of family members as protected persons - states must not „extend” status to them (unless they qualify in their own right)

Limiting the rights, increasing the burdens


Compulsory (not optional as in QD 2011) **withdrawal of refugee status**

- Danger to the security of MS in which present
- Danger to the community of MS (final judgment, particularly serious crime)

Social assistance made **conditional on** participating in **integration measures** → place of residence indirectly fixed

Mixed impact rules

Sur place „manufactured” cases

Circumstances created „for the sole or main purpose of creating the necessary conditions” for applying → **recognition may be denied** already at the **first instance** (not only  subsequent applications) added guarantees: not only GC51, but Charter and ECHR

Internal protection

Compulsory (no longer optional) **application**

 **more guarantees:**


- **if the State** (its agent) **is the actor** of persecution or serious harm: presumption of **non existing internal protection** → no examination of internal protection (unless the State only controls part of the territory)

- assessment **after being found to be in need** of protection

- taking into account general and personal **circumstances**, and the applicants ability to „cater for his or her **basic needs**” (8/5(c))

Mixed impact rules

Access to **long term resident** status (amendment of Directive 2003/109/EC)

Irregular stay or residence in a MS other than the recognising one **interrupts the 5 year period leading to long term resident status**. The clock is reset.  **The whole of the period** between lodging the application and being recognised **counts to the five years** (not only half that period in the first 18 months)

Conclusion

The **history of the Qualification Regulation** explains why it has a **different spirit** than the genuinely new elements of the **Pact**.

The Pact is fear-driven, **securitising, stretching (breaching?) human rights** - the QR is a mixed bag.

In the form of a regulation it aims at **eliminating of divergences and differences** between MSs thereby **reducing the lottery** element of CEAS.

That is expected to **reduce motivation for secondary** movement and thereby contribute to the goals of the Pact.

Conclusion

The new restrictive elements (compulsory assessment of internal protection, compulsory withdrawal of status, interruption of the period to long term residency, control over family unity, conditionality of social assistance)

are

counterbalanced by **positive developments** (sensitivity for gender, age and vulnerability, elimination of internal protection in case of state actor, better COI, clarification of difficult categories /indiscriminate violence, armed conflict, situation of stateless persons from Palestine/)

Conclusion

The **real danger comes** from the screening, the return border procedure, AMMR, and crisis regulations enhanced by the border procedure codified in the Procedures regulation, together with the externalisation actions.

If asylum seekers do not reach the EU territory or do not have access to a fair procedure on the merits, then both the virtues and the shortcomings of the Qualification Regulation only have symbolic importance,

THANKS!

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