Chapter 4

Qualification: Refugee Status and Subsidiary Protection

1. Introduction

1.1. Background, Overview and Rationale

The origin of harmonised measures in the area of international protection can be traced back to a Council third-pillar Joint Position on the refugee definition adopted under the Treaty of Maastricht.\(^1\) The humanitarian crises following the wars in the former Yugoslavia and the failure of the EU to deliver an adequate response led to the organisation of the first European Council exclusively devoted to Justice and Home Affairs in October 1999.\(^2\) The Tampere Conclusions which resulted from that European Council have since provided the political orientation for the Union’s strategy in the field of asylum policy, making clear the need to address international protection in an integrated way.\(^3\)

Tampere delineated a two-step approach which has been mirrored in subsequent Treaty reforms. While Amsterdam created the powers to adopt “minimum standards” in key areas, including criteria for qualification and the content of international protection,\(^4\) the development of a “Common European Asylum System” constitutes now a primary objective of the EU in the area of freedom, security and justice.\(^5\)

Council Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as

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4. Art. 63 TEC.

5. Art. 78(2) TFEU.
persons who otherwise need international protection and the content of the protection granted was adopted on 29 April 2004 after intense and protracted negotiations. A draft Directive was first proposed by the European Commission in September 2001 following consultation with the Member States. The rules which were finally adopted represent the consensus which the first 15 Member States of the Union (less Denmark) were able to achieve under the unanimity rules then applicable. Although the European Parliament had expressed its views when consulted, suggesting a number of substantial improvements, there is no indication that it was able to influence the Council in any decisive way.

The instrument has been amended by Directive 2011/95/EU of 13 December 2011, which has revised the title and effected a series of changes to reflect the Lisbon Treaty’s objective (see Art. 78(1) and (2)(a) and (b) TFEU) of developing a “common policy on asylum”, comprising a “uniform status” for refugees and other persons in need of international protection (for the text of the Directive, see the Annex). Member States had to comply with this Directive by 21 December 2013. Unlike the other CEAS instruments, the territorial scope