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REPORT

on the amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (14203/2004 – C6-0200/2004 – 2000/0238(CNS))

(Renewed consultation)

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Wolfgang Kreissl-Dörfler

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (14203/04 – C6-0200/2004 – 2000/0238(CNS))

(Consultation procedure - renewed consultation)

The European Parliament,

- having regard to the Council draft (14203/2004)¹ and
 - having regard to the amended Commission proposal to the Council (COM(2002)0326)²,
 - having regard to its position of 20 September 2001³,
 - having regard to Article 63, paragraph 1, point (1) (d) of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0200/2004),
 - having regard to Rules 51, 41(4) and 55(3) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Legal Affairs (A6-0000/2005),
1. Approves the Council proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Council

Amendments by Parliament

Amendment 1
Recital 1 a (new)

(1a) Every Member State should have a comprehensive national legal framework

¹ OJ C ... / Not yet published in OJ.

² OJ C 291E, 26.11.2002, p. 143.

³ OJ C 77, 28.3.2002, p. 20.

on asylum that respects at least the basic protection provided under international asylum law;

Amendment 2

Recital 2

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as supplemented by the New York Protocol of 31 January 1967 ("Geneva Convention"), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to ***persecution***.

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as supplemented by the New York Protocol of 31 January 1967 ("Geneva Convention"), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to ***countries or territories where their life or freedom could be at risk***.

Justification

It is necessary to stress the principle of non-refoulement, as the cornerstone of the Common European Asylum System.

Amendment 3

Recital 3 a (new)

(3a) The European Council, at its meeting in Den Haag on 4 and 5 November 2004, confirmed the approach adopted in Tampere and agreed on the establishment of a common asylum procedure and uniform status for those who are granted asylum or subsidiary protection, by 2010.

Justification

It is important to mention the Den Haag Programme, which is the follow up of Tampere.

Amendment 4

Recital 5

(5) The main objective of this Directive is to introduce a minimum framework in the European Community on procedures for

(5) The main objective of this Directive is to introduce a minimum framework in the European Community on procedures for

granting and withdrawing refugee status.

granting and withdrawing refugee status, ***ensuring that no Member State expels or returns an applicant for asylum in any manner whatsoever to the frontier of territories where his life or freedom would be threatened on account of his race, sex, religion, nationality, language, sexual orientation, membership of a particular social group or political opinion or minority, keeping in line with international standards, in particular the 1951 Geneva Convention on Refugees and the Tampere conclusions on asylum.***

Justification

The non - refoulement principle is the cornerstone of the Geneva Convention and of the Tampere conclusions on asylum and should be mentioned explicitly in the text from the beginning as a general rule.

Amendment 5

Recital 8

(8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, ***as general principles of Community law, and by all the existing international obligations, in particular the Geneva Convention.***

Justification

The necessity to respect all existing international law, the Charter and the general principles of Community law needs to be underscored and to be applied to the entire Directive.

Amendment 6

Recital 9

(9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

(9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit ***all forms of*** discrimination.

Justification

It needs to be stated explicitly that all forms of discrimination are prohibited in the application of the Directive.

Amendment 7
Recital 11

(11) It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The organisation of the processing of applications for asylum is left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.

(11) It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum, ***and there therefore need to be fast and efficient procedures which should not take longer than 6 months.*** The organisation of the processing of applications for asylum is left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.

Justification

Fast and effective procedures are crucial. Given the enormous variations in time-periods between Member States, it is essential to establish a common average, since this will create fairer conditions for both asylum seekers and the Member States in terms of an equitable division of responsibilities.

Amendment 8
Recital 13

(13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, ***subject to certain exceptions***, have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and ***sufficient*** procedural guarantees to pursue his/her case at and throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is

(13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and procedural guarantees to pursue his/her case at and throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should provide an applicant at

examined should **normally** provide an applicant at least with a right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she **can reasonably be supposed to understand**.

least with a right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she **understands**.

(The deletion of "can reasonably be supposed to" applies throughout the text. Adopting this amendment will necessitate corresponding changes throughout.)

Justification

The principles of effective remedy should always apply. Asylum seekers should be informed in a language that they understand, not in a language they may reasonably be supposed to understand.

Amendment 9 Recital 14

(14) In addition, specific procedural guarantees for unaccompanied **minors** should be laid down, because of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.

(14) In addition, specific procedural guarantees for unaccompanied **children** should be laid down, because of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States **throughout the whole asylum procedure, consistent with Article 3 of the UN Convention on the Rights of the Child (CRC)**.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

It is better to use the term "child" instead of "minor", in line with the terminology of the Convention on the Rights of the Child.

Amendment 10

Recital 16

(16) Many asylum applications are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to keep existing procedures adapted to the specific situation of these applicants at the border. ***Common rules should be defined on possible exceptions made in these circumstances to the guarantees normally enjoyed by applicants.*** Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.

(16) Many asylum applications are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to keep existing procedures adapted to the specific situation of these applicants at the border. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.

Justification

The principle of non-discrimination requires that all asylum-seeker, irrespective of whether they apply at the border or inside the country, benefit from the same basic principles and guarantees. Here is no reason for requirements of due process of law in asylum cases submitted at the border to be less than for those submitted within the territory.

Amendment 11

Recital 17 a (new)

(17a) Acknowledging the existence of trafficking in human beings and having regard to the best interests of the asylum applicant, he/she must not be discriminated against in any way in his/her application for having entered the Member State in such a manner.

Justification

Trafficking is one of the main avenues for applicants to reach Member State borders by. However, the applicant should not be penalised for having used the only resource he could to flee from persecution.

Amendment 12
Recital 18

(18) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.

(18) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established ***and it must be ensured that evaluation and implementation are carried out correctly and efficiently.***

Justification

Optimum results will only be achieved on the basis of proper implementation.

Amendment 13
Recital 19

(19) Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the ***minimum*** common list of safe countries of origin to be adopted pursuant to this Directive, Member States ***should be obliged to*** consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list, ***after consultation of the European Parliament.***

(19) Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the common list of safe countries of origin to be adopted pursuant to this Directive, Member States ***may*** consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council, ***in co-decision with the European Parliament,*** should take any decisions on the establishment or amendment of the list.

Justification

The Rapporteur considers that the Member States who have not a list on safe countries should not be obliged to adopt it. Moreover the common list at European level should be the only list allowed, not a minimum one allowing Member States to have national lists. The list, which will be established not by this Directive, but by a further legislative act, shall be agreed in co-decision by the Council and the European Parliament. In fact, according to the EC Treaty (article 67-§5, first indent), once the Council has adopted the legislation defining the common rules and basic principles on asylum, the procedure to apply is the co-decision one.

Amendment 14

Recital 20

(20) It results from the status of Bulgaria and Romania as candidate countries for the accession to the European Union and the progress made by these countries for membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union. *deleted*

Justification

It is premature to consider Romania and Bulgaria safe country of origin. Despite the adoption of asylum provisions, there are still shortcomings in the legislation and in the implementation.

Amendment 15

Recital 21

(21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious

(21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country, ***including adherence to the rules of international law on human rights, fundamental freedoms and refugee protection***, and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found

reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

Justification

Adherence to the rules laid down in international law on human rights, fundamental freedoms and refugee protection should be included among the basic criteria used in assessing whether to designate a third country as a safe country (see Annex II of the Directive).

Amendment 16 Recital 22

(22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, except where ***this Directive provides otherwise, in particular where it can be reasonably assumed*** that another country ***would*** do the examination ***or provide sufficient*** protection.

Especially, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

(22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, except where ***it is established*** that another country ***is competent to*** do the examination ***and can provide effective, equivalent and adequate*** protection ***in accordance with Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national****. Especially, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise ***effective-*** protection and the applicant will be readmitted to this country.

* *OJ L 50, 25.02.2003, p. 1.*

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

The term "sufficient" appears to indicate a lower degree of protection and should be replaced by effective.

Amendment 17
Recital 23

(23) Member States should also not be obliged to assess the substance of an asylum application where the applicant, due to a connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In the interest of avoiding secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established. ***deleted***

Amendment 18
Recital 24

(24) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to carry out no or no full examination of asylum applications regarding applicants who enter their territory from such European third countries. Given the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that ***deleted***

the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter after consultation of the European Parliament.

Justification

See justification to Am. 157 (Article 35 A).

Amendment 19
Recital 25

(25) It follows from the nature of the common standards concerning **both** safe third country **concepts** as set out in this Directive, that the practical effect of the **concepts** depends on whether the third country in question permits the applicant in question to enter its territory.

(25) It follows from the nature of the common standards concerning **the** safe third country **concept** as set out in this Directive, that the practical effect of the **concept** depends on whether the third country in question permits the applicant in question to enter its territory.

Justification

The only concept accepted by the Rapporteur is the safe country of origin, not the "super safe".

Amendment 20
Recital 26

(26) With respect to the withdrawal of refugee status, Member States shall ensure that the persons benefiting from the refugee status are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status. ***However, these guarantees can be dispensed with where the reasons for the cessation of the refugee status is not related to a change of the conditions on which the recognition was based.***

(26) With respect to the withdrawal of refugee status, Member States shall ensure that the persons benefiting from the refugee status are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status.

Amendment 21
Recital 27

(27) It reflects a basic principle of

(27) It reflects a basic principle of

Community law that the decisions taken on an application for asylum and on the withdrawal of a refugee status must be subject to an effective remedy before a court or tribunal in the meaning of Article 234 of the Treaty establishing the European Community. ***The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.***

Community law that the decisions taken on an application for asylum and on the withdrawal of a refugee status must be subject to an effective remedy before a court or tribunal in the meaning of Article 234 of the Treaty establishing the European Community. ***Decisions taken on an application for asylum should be subject to an appeal consisting of an examination on both facts and points of law by a court of law. The applicant should be entitled not to be expelled until a court has ruled on the right to remain pending the outcome of this appeal.***

Justification

The principle of effective remedy is a general principle of international law and it is embodied in EC Law (e.g. C-222/84), in Article 47 of the Charter of Fundamental Rights of the European Union and in Article 13 of the European Convention of Human Rights. As held by the European Court of Human Rights, it implies the right to remain in the territory of a Member State until a final decision on the application has been taken. The effective remedy implies that the appeal should have a suspensive effect.

Amendment 22 Recital 28

(28) In accordance with Article 64 of the Treaty establishing the European Community, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

deleted

Justification

This recital has nothing to do with the Directive.

Amendment 23 Recital 29 a (new)

(29a) Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with

regard to the processing of personal data and on the free movement of such data¹ shall apply to personal data treated in application of this directive. Directive 95/46/EC shall also apply to the transmission of data from Member States to the UNHCR in the exercise of its mandate under the Geneva Convention. This transmission is subject to the level of personal data protection in the UNHCR being considered as adequate.

Justification

This recital is very important and it was in the revised Commission proposal on the Directive.

Amendment 24
Recital 29 d (new)

(29d) Member States should provide for penalties in the event of infringement of the national provisions adopted pursuant to this Directive.

Justification

This recital is very important and it was in the revised Commission proposal on the Directive.

Amendment 25
Article 1

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status ***which are in line with the Geneva Convention and with Directive 2004/83/EC.***

Justification

Directive shall be in accordance with international asylum law.

¹ OJ L 281, 23.11.1995, p.31

Amendment 26
Article 1 a (new)

Article 1a

The Directive respects all the existing international obligations of Member States as well as the Charter of Fundamental Rights of the European Union, especially Article 18, as general principles of Community law.

Justification

The respect of fundamental rights should be underscored also in an article, not only in the recital, in particular the reference to the right to asylum in the Charter.

Amendment 27
Article 2, point (e)

(e) "Determining authority" means any ***quasi-judicial*** or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I;

(e) "Determining authority" means any judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I;

Justification

The determining authority is either competent to examine asylum applications or is not qualified to carry out this function and hence cannot carry it out. The term 'quasi-judicial' casts doubt on the legitimacy of the body itself.

Amendment 28
Article 2, point (g)

(g) "Refugee Status" means the recognition by a Member State ***of a third country national or stateless person*** as a refugee;

(g) "Refugee Status" means the recognition by a Member State of ***such status granted to the applicant***;

Justification

In the same way as for the previous amendment it is stressed that the concept of 'refugee' covers anyone who meets the criteria laid down in the Geneva Convention. Any description or specification may be restrictive. Refugee status is the recognition given to the applicant by a Member State.

Amendment 29
Article 2, point (h)

(h) "Unaccompanied **minor**" means a person below the age of eighteen who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;

(h) "**Unaccompanied child**" or "**separated child**" means a person below the age of eighteen who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;
"unaccompanied child" refers to a child who has been separated from both parents and other relatives or legal or customary guardians; "separated child" refers to a child who is accompanied by an adult who is unwilling or unable to assume responsibility for long-term care of the child.

For the purpose of this Directive, the term "unaccompanied minor" covers both "unaccompanied children" and "separated children";

Justification

Keeping in line with terminology used on the international level in human rights and refugee laws.

Amendment 30
Article 3, paragraph 1, point (a) (new)

(a) This Directive shall be implemented and transposed into national legislation with due respect for fundamental human rights and principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law. International law and United Nations agreements shall be observed.

Justification

The necessity to respect fundamental human rights, with a specific reference to the Charter of Fundamental Rights of the EU, as well as all existing international law commitments needs to be underscored outside Chapter II (subject to a number of derogations).

Amendment 31

Article 3, paragraph 1, point (b) (new)

(b) This Directive shall be implemented and transposed into national legislation with due respect for all the existing international obligations of the EU and its Member States and, in particular, the Geneva Convention and partnership and cooperation agreements concluded with third countries.

Justification

See amendment 1.

Amendment 32

Article 3, paragraph 1 a (new)

1a. This Directive shall be applied without discrimination of any form in accordance with Article 13 of the Treaty and international conventions on human rights and refugee protection.

Justification

In applying the Directive, Member States must take account of the principle of non-discrimination as laid down in Article 13 of the Treaty and in international conventions on human rights and refugee protection.

Amendment 33

Article 3A, paragraph 1, subparagraph 1

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with the provisions of this

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with the provisions of this

Directive, in particular Articles 7(2) **and** 8.

Directive, in particular Articles 7(2), 8 **and** 10(1).

Justification

Right to a personal interview is an essential right in the asylum process which must be safeguarded.

Amendment 34

Article 3A, paragraph 2, point (b)

(b) taking a decision on the application in the light of national security provisions, provided a determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Council Directive 2004/83/EC;

(b) taking a decision on the application in the light of national security provisions, ***whilst respecting the international conventions and the Charter of Fundamental Rights and Freedoms***, provided a determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Council Directive 2004/83/EC;

Justification

As explained earlier, the autonomy of a Member State as regards public order and internal security cannot be exercised without respect for the international conventions, the Charter of Fundamental Rights and respect for the personal freedoms of all persons

Amendment 35

Article 3 A, paragraph 2, point (e)

(e) refusing permission to enter in the framework of the procedure provided for in Article 35(2) **to (5)**, subject to the conditions and as set out in these paragraphs;

(e) refusing permission to enter in the framework of the procedure provided for in Article 35, subject to the conditions and as set out in these paragraphs;

Justification

Linked to the modification of Article 35.

Amendment 36

Article 3 A, paragraph 2, point (f)

(f) establishing that an applicant is seeking to enter or has entered in the Member State from a safe third country

deleted

pursuant to Article 35A, subject to the conditions and as set out in this Article.

Justification

The deletion of article 2 is linked to the deletion of article 35A on a "super safe" third country.

Amendment 37
Article 3A, paragraph 3

3. Member States shall ensure that where authorities are designated in accordance with paragraph 2, the personnel of such authorities have the appropriate knowledge ***or receive the necessary*** training to fulfil their obligations when implementing this Directive.

3. Member States shall ensure that where authorities are designated in accordance with paragraph 2, the personnel of such authorities have the appropriate knowledge ***and*** training to fulfil their obligations when implementing this Directive.

Justification

Personnel must be given appropriate training to ensure knowledge of the sensitive and delicate nature of their work.

Amendment 38
Article 4 a (new)

Article 4a

No Member State shall expel or return an applicant for asylum to the territory where his or her life or freedom would be threatened on account of his or her race or religion, nationality, language, sexual orientation, membership of a particular social group or political opinion or minority or where he or she faces a real risk of torture or inhuman or degrading treatment.

Justification

The non-refoulement principle is the cornerstone of the Geneva Convention upon which the Tampere conclusions indicate the EU common asylum procedure will be based. Therefore it should be explicitly mentioned under basic principles and guarantees.

Amendment 39
Article 5, paragraph 1

1. Member States may require that applications for asylum be made in person and/or at a designated place.

1. Member States may require that applications for asylum be made in person and/or at a designated place. ***Member States should allow the possibility that the application is made by a legal representative on behalf of a person, in specific circumstances.***

Justification

It should be possible, for example, for a person in detention to be represented by a lawyer.

Amendment 40
Article 5, paragraph 3 a (new)

3a. Applications from unaccompanied children and other persons in a particularly vulnerable situation shall be considered and decided on a priority basis and in compliance with the relevant formal and material requirements. Priority shall also be given to the consideration and decision of manifestly well founded claims.

Justification

The asylum procedure should duly address the special needs of asylum-seekers who are in a particularly vulnerable situation or those who have an obviously well founded claim.

Amendment 41
Article 5, paragraph 3 b (new)

3b. In cases in which dependent adults consent to the lodging of the application on their behalf, consistent with Article 3 of the Convention on the Rights of the Child (CRC), the application of the best interest of the child principle shall be adhered to throughout the whole asylum procedure.

Justification

Ensuring accordance with the Convention of the Rights of the Child.

Amendment 42

Article 5, paragraph 4, introductory part

4. Member States may determine, in national legislation

4. Member States may determine, ***provided they act in accordance with Article 3 of the Convention on the Rights of the Child (CRC)***, in national legislation

Justification

Article 3 of the Convention of the Rights of the Child (CRC), and ECHR.

Amendment 43

Article 5, paragraph 4, point (c)

(c) the cases in which the lodging of an application for asylum is deemed to constitute also the lodging of an application for asylum for any unmarried minor.

deleted

Justification

The fact that a child applicant is married does not necessarily indicate that s/he is not in need of international protection.

Amendment 44

Article 5, paragraph 5 a (new)

5a. Member States shall ensure that each person who wishes to make an asylum application promptly receives exhaustive information about the procedure and his/her rights and obligations, in his/her own language.

Justification

The right to receive full information in a language understandable to the applicant is essential to ensure that the procedure is applied in a fair manner.

Amendment 45
Article 6, paragraph 1

1. Applicants shall be allowed to remain in the Member State, ***for the sole purpose of the procedure, until such time as the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III.*** This right to remain shall not constitute an entitlement to a residence permit.

1. Applicants shall be allowed to remain in the Member State, ***in which the application for asylum has been made or is being examined until a final decision has been reached and the appeals procedure exhausted.*** This right to remain shall not constitute an entitlement to a residence permit.

Justification

The principle of effective remedy is a general principle of international law and it is embodied in EC Law (e.g. C-222/84), In Article 47 of the Charter of Fundamental Rights of the European Union and in Article 13 of the European Convention of Human Rights. As held by the European Court of Human Rights, it implies the right to remain in the territory of a Member State until a final decision on the application has been taken. The effective remedy implies that the appeal should have a suspensive effect.

Amendment 46
Article 6, paragraph 1 a (new)

1a. Member States may derogate from paragraph 1 only when it has been established that the request is manifestly unfounded or clearly abusive. In such cases, a court of law or other independent authority should review and confirm the denial of suspensive effect, based on a review of the facts and the likelihood of success on appeal.

Justification

A derogation may be possible only in cases manifestly unfounded or abusive.

Amendment 47
Article 7, paragraph 1

1. Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded

1. Without prejudice to Article 23 (4) (i), Member States shall ensure that applications for asylum are neither rejected nor excluded

from examination on the **sole ground** that they have not been made as soon as possible.

from examination on the **grounds** that they have not been made as soon as possible.

Justification

Concerns that late applications will not be judged on the merit of their content, but on the fact of late submission. Further, in Jabari v. Turkey (ECHR) and UNCAT Committee, late submission is not inconsistent where genuine risk of persecution exists.

Amendment 48

Article 7, paragraph 2, point (a)

(a) applications are examined and decisions are taken individually, objectively and impartially;

(a) applications are examined and decisions are taken individually, objectively and impartially ***in accordance with this Directive and international human rights and refugee law;***

Justification

Ensuring Directive is in accordance with international law.

Amendment 49

Article 7, paragraph 2, point (b)

(b) precise and up-to-date information is obtained from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum ***and, where necessary, in countries through which they have transited***, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(b) precise and up-to-date information is obtained from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR) ***and other civil society organisations working in the applicants' countries of origin***, as to the general ***civil, legal and political*** situation, ***particularly with regard to respect for human rights and fundamental freedoms***, prevailing in the countries of origin of applicants for asylum, and that such information is made available to the personnel responsible for examining applications and taking decisions;

Justification

Civil society organisations in the country of origin can provide expertise on the human rights situation within the country.

A safe third country should have be evaluated on an individual basis and the applicant should

have a meaningful link to the country via family or a broader community.

Asylum applications must be examined on the basis of information which makes it possible to assess the civil, legal and political situation prevailing in the applicant's country of origin, including respect for human rights and fundamental freedoms. Such information must be obtained in order to allow the relevant authority to act objectively and impartially.

Amendment 50
Article 7, paragraph 2, point (c)

(c) the personnel examining applications and taking the decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

(c) the personnel examining applications and taking the decisions have the knowledge, **training and instructions** with respect to relevant standards applicable in the field of asylum and refugee law.

Justification

To ensure each application is fairly and thoroughly evaluated on its merits, personnel must be properly trained in the area.

Amendment 51
Article 7, paragraph 4

4. Member States **may** provide for rules concerning the translation of documents relevant for the examination of applications.

4. Member States **must** provide for rules concerning the translation of documents relevant for the examination of applications.

Justification

Translation is a crucial issue in the asylum application process.

Amendment 52
Article 8, paragraph 1

1. Member States shall ensure that decisions on applications for asylum are given in writing.

1. Member States shall ensure that **all** decisions on applications for asylum are given in writing.

Justification

A written record must be available of all decisions taken.

Amendment 53
Article 8, paragraph 1

1. Member States shall ensure that decisions on applications for asylum are given in writing.

1. Member States shall ensure that decisions on applications for asylum are given in writing, ***in a language which the applicant understands.***

Justification

Asylum seekers must be informed in a language they understand. This is particularly important in cases of rejection, so that they may be made aware of the reasons in fact or in law for the decision and of their possibilities of appeal.

Amendment 54
Article 8, paragraph 2, subparagraph 2

Member States need not state the reasons for not granting the refugee status in the decision where the applicant is granted a status, which offers the same rights and benefits under national and Community law as the refugee status by virtue of Council Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting the refugee status are stated in the applicant's file, and that the applicant has, upon request, access to his/her file.

Member States need not state the reasons for not granting the refugee status in the decision where the applicant is granted a status, which offers the same rights and benefits under national and Community law as the refugee status by virtue of Council Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting the refugee status are stated in the applicant's file, and that the applicant ***or his/her lawyer or legal representative*** has, upon request, access to his/her file.

Justification

The applicant's right to be kept informed at all times and in all circumstances of the progress being made in the examination of an application for asylum should never be undermined. Above all, the applicant should be enabled to understand what is being decided about his/her case, so that he/she may have access in good time and under appropriate conditions to appeal procedures for the recognition of his/her rights.

Amendment 55
Article 8, paragraph 2, subparagraph 3

Moreover, Member States ***need not*** provide information on how to challenge a negative decision in writing in conjunction with that decision ***where the applicant has been***

Moreover, Member States ***must*** provide information on how to challenge a negative decision in writing in conjunction with that decision.

informed at an earlier stage either in writing or by electronic means accessible to the applicant of how to challenge such a decision.

Justification

Applicants must be informed of all of their rights in writing at each point when a decision in the application is taken.

Amendment 56

Article 9, paragraph 1, point (a)

(a) they must be informed in a language which they ***may reasonably be supposed*** to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not co-operating with the authorities. They must be informed about the time-frame, as well as the means at their disposal to fulfil the obligation to submit the elements as referred to in Article 4 of Council Directive 2004/83/EC. The information must be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 9A;

(a) they must be informed in a language which they ***are known for certain*** to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not co-operating with the authorities. They must be informed about the time-frame, as well as the means at their disposal to fulfil the obligation to submit the elements as referred to in Article 4 of Council Directive 2004/83/EC. The information must be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 9A;

Justification

The existing wording is too vague: it must be established with certainty that those concerned understand all the information concerning their request.

Amendment 57

Article 9, paragraph 1, point (b)

(b) they must receive the services of ***an*** interpreter for submitting their case to the competent authorities whenever necessary. Member States shall ***consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed*** as referred to in Articles 10 and 11 and appropriate communication cannot be ensured without

(b) they must receive the services of ***a qualified and impartial*** interpreter for submitting their case to the competent authorities whenever necessary. Member States shall ***guarantee this service during all personal interviews, appeal hearings and other verbal communications with the competent authorities, in particular*** as referred to in Articles 10 and 11 and ***when***

such services. In **this case** and in other cases where the competent authorities call upon the applicant, the services shall be paid for out of public funds;

appropriate communication cannot be ensured without such services. In **these** and in other cases where the competent authorities call upon the applicant, the services shall be paid for out of public funds;

Justification

Translation and interpreting services are fundamental to a fair asylum process.

Amendment 58
Article 9, paragraph 1, point (c)

(c) they **must not be denied the** opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR in the territory of the Member State **pursuant to an agreement with** that Member State;

(c) they **must be given an effective** opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR **or independently with asylum seekers** in the territory of the Member State;

Justification

The amendment is self-evident.

Amendment 59
Article 9, paragraph 1, point (d)

(d) they must be given notice **in reasonable time** of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

(d) they must be given notice, **within a time-limit which shall not exceed 6 months**, of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

Justification

If the procedures are to be swift and efficient, a maximum time-limit for decision must be set, based on the Community average.

Amendment 60
Article 9A, paragraph 2, point (d)

(d) the competent authorities may **search** the applicant and the items he/she carries with

(d) the competent authorities may **ascertain that** the applicant **does not constitute a**

him/her;

danger and ***check*** the items he/she carries with him/her;

Justification

Applicants for asylum should be treated as persons in need of help and it should not be assumed that they constitute a danger and hence are subject to prosecution. They are entitled to fair treatment and the appropriate safeguards.

Amendment 61

Article 10, paragraph 1

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person ***competent*** under national law to conduct such an interview.

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview, ***if necessary in the presence of an interpreter and his/her lawyer or legal representative*** on his/her application for asylum with a person ***professionally appropriate, and qualified*** under national law ***governing the procedures concerning right of asylum and refugees***, to conduct such an interview. ***In the case of children or persons with physical or mental limitations and pregnant women or victims of sexual violence, specific procedural guarantees should be provided and, if necessary, specifically qualified professionals should be brought in.***

Justification

The interview should be held in the presence of qualified and appropriate personnel. Knowledge of national legislation is not sufficient to safeguard applicants for asylum, who are mainly protected by international conventions. They often require psychological support and need formal legal advice. Thus only the specific qualities of the persons assisting in the interview can help to provide elements useful for the successful outcome of the application.

Amendment 62

Article 10, paragraph 1, subparagraph 2

Member States may also give the opportunity of a personal interview to each adult among the dependants referred to in Article 5(3).

The dependants referred to in Article 5(3) ***shall also have the right to a personal interview.***

Justification

Acknowledgement of cases where the applicant is not familiar with all the relevant activities or events relating to the dependent, for example in case the wife did not tell her husband about sexual abuse by government authorities or other actors out of shame and/or fear. Here, the wife has the right to be heard separately and have her own personal interview.

Amendment 63

Article 10, paragraph 1, subparagraph 3

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

Member States may determine in national legislation the cases in which a **child** shall be given the opportunity of a personal interview, **taking into account the individual's level of maturity and any psychological trauma he/she has endured. The interviewer shall bear in mind that due to his/her age, the child's knowledge of conditions in the country of origin may be limited.**

Justification

Right to an interview is central to determining asylum applications as witnessed in the case law of the ECHR, Human Rights Committee and the UNCAT Committee as well as being referred to in the 1995 Council Resolution on Minimum Guarantees for Asylum Procedures. The original format of Article 10 undermines this right.

Amendment 64

Article 10, paragraph 2, point (a a) (new)

(aa) the competent authority is not able to conduct the interview, because the applicant has, without good reasons, not complied with invitations to appear;

Justification

The exceptions provided under article 2(b)(c) and 3 undermine the fairness of procedures and the accuracy of decisions. Interviews are necessary in order to allow the applicant to provide all relevant information and to clarify any discrepancies or inconsistencies in his/her account. In the absence of an interview, Member States will not be able to fulfil their obligations under international law and this would inevitably result in the refoulement of individuals. Only very limited exceptions shall be allowed.

Amendment 65
Article 10, paragraph 2, point (a b)(new)

(ab) the person has a mental or emotional disturbance which impedes a normal examination of his/her case;

Justification

The exceptions provided under article 2(b)(c) and 3 undermine the fairness of procedures and the accuracy of decisions. Interviews are necessary in order to allow the applicant to provide all relevant information and to clarify any discrepancies or inconsistencies in his/her account. In the absence of an interview, Member States will not be able to fulfil their obligations under international law and this would inevitably result in the refoulement of individuals. Only very limited exceptions shall be allowed.

Amendment 66
Article 10, paragraph 2, point (b)

(b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with filling his/her application and submitting the essential information regarding the ***deleted***

Justification

The exceptions provided under article 2(b)(c) and 3 undermine the fairness of procedures and the accuracy of decisions. Interviews are necessary in order to allow the applicant to provide all relevant information and to clarify any discrepancies or inconsistencies in his/her account. In the absence of an interview, Member States will not be able to fulfil their obligations under international law and this would inevitably result in the refoulement of individuals.

Amendment 67
Article 10, paragraph 2, point (c)

(c) the determining authority, on the basis of a complete examination of information provided by the applicant, considers the application as unfounded in the cases where the circumstances mentioned in Article 23(4)(a), (c), (g), (h) and (j) apply. ***deleted***

Justification

See justifications to Article 10, paragraph 2 (b).

Amendment 68
Article 10, paragraph 3

3. The personal interview may also be omitted, where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt, Member States may require a medical or psychological certificate. ***deleted***

Where the Member State does not provide the opportunity for a personal interview pursuant to this paragraph, or where applicable, to the dependant, reasonable efforts must be made to allow the applicant or the dependant to submit further information.

Justification

See justifications to Article 10, paragraph 2 (b).

Amendment 69
Article 10, paragraph 3 a (new)

3a. Member States shall ensure that an applicant who cannot attend or complete a personal interview owing to his/her state of medical and/or psychological health, physical or mental disability, or particular emotional disturbance, is given specific attention in order to safeguard the fairness of the proceedings.

Justification

This is to strengthen the weak safeguard in the original Article 10 (3).

Amendment 70
Article 10, paragraph 4

4. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum.

4. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum ***if the absence is for reasons connected with Articles 2(b) and (c), 10(3), 20(1), 23(4)(a), (c), (g), (h), and (j), and paragraph 3 of this Article.***

Justification

To ensure principle of non-refoulement is met.

Amendment 71
Article 10, paragraph 5

5. The absence of a personal interview ***pursuant to paragraph 2(b) and (c) and paragraph 3*** shall not ***adversely affect*** the decision of the determining authority.

5. The absence of a personal interview shall not ***negatively impact on*** the decision of the determining authority. ***In such cases, each person must be given the opportunity to be represented, by a guardian or a legal representative in the case of children, or a counsellor or legal adviser as appropriate.***

Justification

Ensuring the rights of children and other dependants are met.

Amendment 72
Article 10, paragraph 6

6. Irrespective of Article 20 (1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.

6. Irrespective of Article 20 (1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear, ***or the interview failed to materialise or was terminated due to the applicant's psychological and/or medical state.***

Justification

To ensure safeguards in Article 20 are not overridden.

Amendment 73

Article 11, paragraph 3, point (a)

a) ensure that the person who conducts the interview **is sufficiently competent to take account** of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, **insofar as it is possible to do so**, and

a) ensure that the person who conducts the interview **and the interpreter have received the appropriate training and have appropriate professional competence and the ability to make a fair and accurate assessment** of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so, and

Justification

The person who conducts the interview with the applicant for asylum needs to have the right professional qualifications and abilities to enable him to make accurate assessments that do not damage the applicant's interests.

Amendment 74

Article 11, paragraph 3, point (b)

(b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she **may reasonably be supposed** to understand and **in which he/she is able to** communicate in.

(b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she **is able** to understand and communicate in.

Justification

Applicant's vulnerability in his/her surroundings must be taken into account, and to ensure accuracy of the applicant's account, the language must be clearly one he/she can understand.

Amendment 75
Article 11, paragraph 4

4. Member States *may* provide for rules concerning the presence of third parties at the personal interview.

4. Member States *shall* provide for rules concerning the presence of third parties at the personal interview, *provided such rules are in accordance with international standards*.

Justification

See that it is In line with the Committee of the Rights of the Child.

Amendment 76
Article 12, paragraph 1

1. Member States shall ensure that a written report is made of every personal interview, containing *at least* the *essential* information regarding the application, as presented by the applicant, in terms of Article 4(2) of Council Directive 2004/83/EC.

1. Member States shall ensure that a written report is made of every personal interview, containing the information regarding the application as presented by the applicant, in terms of Article 4(2) of Council Directive 2004/83/EC.

Justification

The Council proposal states that the report does not have to be a transcript of what has been said (as proposed by the Commission in 2002). The interview, however, is the main fact-finding possibility. The failure to fully record the personal interview is condemned by the ECtHR in Chahal case.

Amendment 77
Article 12, paragraph 2

2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.

2. Member States shall ensure that applicants have timely access to the report of the personal interview *in a language they understand or in another form considered appropriate*. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.

Justification

The report should be accessible, if possible in a language that applicant understands, but, above all, the timing of its being made available should not prevent an appeal from being lodged.

Amendment 78

Article 12, paragraph 3, subparagraph 1

3. Member states **may request the applicant's approval on** the contents of the report of the personal interview.

3. Member States **must have the applicant verify** the contents of the report of the personal interview, **in order to avoid misunderstandings or contradictions or invalidation of the application at a later date.**

Justification

Not having the need for the applicant to comment on the accuracy or completeness of the report leaves interview accounts open to misinterpretation, manipulation and distortion. "Verify" is a more accurate description of the applicant's role at this stage.

Amendment 79

Article 12, paragraph 3, subparagraph 2

Where an applicant refuses to **approve** the contents of the report, the reasons for this refusal shall be entered into the applicant's file.

Where an applicant refuses to **verify** the contents of the report, the reasons for this refusal shall be entered into the applicant's file.

Justification

Not having the need for the applicant to comment on the accuracy or completeness of the report leaves interview accounts open to misinterpretation, manipulation and distortion. "Verify" is a more accurate description of the applicant's role at this stage.

Amendment 80

Article 12, paragraph 3, subparagraph 3

The refusal of an applicant to approve the contents of the report of the personal interview **shall** not prevent the determining authority from taking a decision on his/her application.

Approval of the asylum applicant should be requested. The refusal of an applicant to approve the contents of the report of the personal interview **may** not prevent the determining authority from taking a decision on his/her application.

Justification

The approval of the asylum seeker should be requested to verify the content of the report, to avoid misunderstanding and facilitate the clarification of contradictions.

Amendment 81

Article 12, paragraph 3, subparagraph 3

The refusal of an applicant to **approve** the contents of the report of the personal interview shall not prevent the determining authority from taking a decision on his/her application.

The refusal of an applicant to **verify** the contents of the report of the personal interview shall not prevent the determining authority from taking a decision on his/her application; **but the applicant's refusal to verify the contents will be taken into account when considering the contents of the report.**

Justification

Not having the need for the applicant to comment on the accuracy or completeness of the report leaves interview accounts open to misinterpretation, manipulation and distortion. "Verify" is a more accurate description of the applicant's role at this stage.

Amendment 82

Article 13, paragraph 1

1. Member States shall allow applicants for asylum at their own cost the opportunity to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

1. Applicants for asylum shall be given the opportunity to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications **at all stages of the procedures, including following a negative decision.**

Justification

Having a legal adviser is a right of asylum seekers and it is an essential safeguard.

Amendment 83

Article 13, paragraph 3, subparagraph 1, introductory part

3. Member States may provide in their national legislation that free legal

3. The assistance must be given free of charge or at least in accordance with

assistance and/or representation be granted:

Member States' rules on legal aid/financial assistance, which is equivalent to that which is available to nationals, in legal or administrative procedures, if the applicant has no adequate means to pay for it himself.

Justification

Exceptions to the provision of free legal aid should be made only where the applicant has adequate financial means.

Amendment 84

Article 13, paragraph 3, subparagraph 1, point (a)

(a) only for the procedures before a court or tribunal in accordance with Chapter V and not to any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or **deleted**

Justification

This exception is unacceptable according to international law.

Amendment 85

Article 13, paragraph 3, subparagraph 1, point (b)

(b) only to those who lack sufficient resources; and/or **deleted**

Justification

Covered by new paragraph 3 of article 13.

Amendment 86

Article 13, paragraph 3, subparagraph 1, point (c)

(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or **deleted**

Justification

Covered by new paragraph 3 of article 13.

Amendment 87

Article 13, paragraph 3, subparagraph 1, point (d), and subparagraph 2

(d) only if the appeal or review is likely to succeed. ***deleted***

Member States shall ensure that legal assistance and/or representation granted under subparagraph (d) is not arbitrarily restricted

Justification

This exception is unacceptable according to international law.

Amendment 88

Article 13, paragraph 4

4. Rules concerning the modalities for filing and processing such requests may be provided by Member States. ***deleted***

Justification

Covered by new paragraph 3 of article 13.

Amendment 89

Article 13, paragraph 5, point (a)

(a) impose monetary and/or time limits on the provision of free legal assistance and/or representation provided that such limits do not arbitrarily restrict access to legal assistance and/or representation.

(a) limit the amount of legal assistance to the average costs of legal assistance for each relevant step in the asylum procedure provided that such limits do not arbitrarily restrict access to legal assistance and/or representation.

Justification

More specific to prevent the right to access to legal assistance from being taken away.

Amendment 90
Article 14, paragraph 1, subparagraph 1

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law who assists or represents an applicant for asylum under the terms of national law shall enjoy access to such information in the applicant's file ***as is liable to be examined by the authorities referred to in Chapter V, insofar as the information is relevant to the examination of the application.***

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law who assists or represents an applicant for asylum under the terms of national law shall enjoy access to information in the applicant's file.

Justification

Access to the file is the only way to ensure that the general information relied on by authorities is up-to-date accurate and relevant to the applicant's case.

Amendment 91
Article 14, paragraph 1, subparagraph 2

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, access to the information or sources in question must be available to the authorities referred to in Chapter V, except where such access is precluded in national security cases.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, access to the information or sources in question must be available to the authorities referred to in Chapter V, except where such access is precluded in ***clearly defined*** national security cases.

Justification

Failure to disclose information will amount to a violation of Article 13 ECHR in cases where Article 3 ECHR is applicable.

Amendment 92
Article 14, paragraph 2

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order *or administrative management of the area or to ensure an efficient examination of the application*, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has **full** access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible **and in any case fully respecting the letter and case-law of the European Convention on Human Rights and Fundamental Freedoms**.

Amendment 93
Article 15, paragraph 1, point (b)

(b) ensure that the representative is given the opportunity to inform the unaccompanied *minor* about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, *within the framework set by the person who conducts the interview*.

(b) ensure that the representative is given the opportunity to inform the unaccompanied **child** about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments.

Justification

This restriction seems unnecessary.

Amendment 94
Article 15, paragraph 2, point (a)

(a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or

deleted

Justification

This paragraph is discriminatory to 17 years olds and not acceptable according to Member States' obligations to treat all young people under 18 as children, as defined by the Convention on the Rights of the Child.

Amendment 95
Article 15, paragraph 2, point (c)

(c) is married or has been married. ***deleted***

Justification

The fact that a child applicant is married does not necessarily indicate that she/he is not in need of a special protection. Marriage is lawful at a very young age in some countries and it is not related to the maturity of the child.

Amendment 96
Article 15, paragraph 3

3. Member States may, in accordance with laws and regulations in force at the time of the adoption of this Directive, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative. ***deleted***

Justification

There is no justification in withholding representation from young people aged 16. In accordance with the Convention on the Rights of the Child any person under 18 should be considered as a child. Therefore any unaccompanied child under 18 should be entitled to representation.

Amendment 97
Article 15, paragraph 5 a (new)

5a. Persons claiming to be children should be provisionally treated as such, until an age determination has taken place.

Justification

The burden of the proof in this case should be on the side of the authorities.

Amendment 98
Article 15, paragraph 6

6. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this **Article**.

6. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this **Directive**.

Justification

The best interest of the child should be taken into account in all the fields of the Directive.

Amendment 99
Article 17

1. Member States shall not hold *a person* in detention *for the sole reason that he/she is an applicant for asylum*.

2. *Where an applicant for asylum is held in detention, Member States shall ensure that there is the possibility of speedy judicial review.*

1. *In principle*, Member States shall not hold *asylum seekers* in detention *or in a closed reception centre. Alternatives to detention and non-custodial measures must always be considered before resorting to detention.*

2. *No asylum seeker may be detained unless it has been established that the detention is necessary, lawful and justified on one of the grounds recognised as legitimate by international standards. Asylum seekers may only be detained in facilities clearly separated from prisons.*

3. *The period of detention shall not exceed 6 months.*

4. *Access to an effective legal assistance, access to the services of competent, qualified and impartial interpreters and access to qualified medical personnel shall be systematically granted.*

5. *Persons deprived of their liberty shall be given adequate opportunity to have their detention reviewed as to both its legality and its necessity, by means of a prompt, fair, individual hearing before a judicial or*

other similar authority whose status and tenure afford the strongest possible guaranties of competence, impartiality and independence.

6. Unaccompanied children shall never be detained on the ground of their immigration status. Alternative measures must be actively considered in the case of persons belonging to vulnerable categories, such as unaccompanied elderly person, torture or trauma victims, and persons with a mental or a physical disability. As a general rule, the detention of pregnant women in their final months and nursing mothers shall be avoided

Justification

The Rapporteurs consider, in line with several NGOs, including Amnesty International, that although the draft article 17 reiterates the general principle that asylum seekers should not be detained for the sole reason that he/she is an applicant for asylum, the wording of this article is too vague and leaves too wide margin of discretionary power to the Member States. The wording of the new article 17 complies with international obligations.

Amendment 100

Article 20, paragraph 1, subparagraph 1

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision ***either*** to discontinue the examination ***or to reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Council Directive 2004/83/EC.***

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision to discontinue the examination ***and to consequently close the file on the applicant.***

Justification

A claim may be implicitly withdrawn for a variety of reasons which are not necessarily related to a lack of protection needs. A rejection of a claim in such circumstances carries the risk that existing protection needs are not examined and recognised. Rejections are particularly problematic in cases where applicants are sent back to another country (Dublin II Regulation) where meanwhile the previously made application has been rejected, deadlines for appeals are missed and reopening almost impossible.

Amendment 101
Article 20, paragraph 2, subparagraph 2

Member States may provide for a time limit after which the applicant's case can no longer be reopened. ***deleted***

Justification

Time limits are incompatible with non-refoulement, 1951 Convention.

Amendment 102
Article 21, paragraph 1, introductory part

1. Member States ***shall*** allow the UNHCR : 1. Member States ***are obliged to*** allow the UNHCR:

Justification

In line with Article 35 of the 1951 Convention.

Amendment 103
Article 21, paragraph 2

2. Paragraph 1 shall also apply to an organisation which is working ***in the territory of the Member State*** on behalf of the UNHCR ***pursuant to an agreement with that Member State.***

2. Paragraph 1 shall also apply to an organisation which is working on behalf of the UNHCR, ***subject to the agreement of the Member State.***

Justification

In view of the different arrangements which may be used, UNHCR suggested a different wording.

Amendment 104
Article 22, point (a)

(a) ***directly*** disclose the information regarding individual applications for asylum, or the fact that an application has been made, to the alleged actor(s) of persecution of the applicant for asylum.

(a) disclose the information regarding individual applications for asylum, or the fact that an application has been made, to the alleged actor(s) of persecution of the applicant for asylum.

Justification

Conditions that are too random could put asylum seekers at risk.

Amendment 105
Article 22, point (b)

(b) obtain any information from the alleged actor(s) of persecution ***in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.***

(b) obtain any information from the alleged actor(s) of persecution.

Justification

Conditions that are too random could put asylum seekers at risk.

Amendment 106
Article 23, paragraph 2

2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

2. Member States shall ensure that such a procedure is concluded as soon as possible ***and within no later than 6 months***, without prejudice to an adequate and complete examination.

Justification

Fast and effective procedures are crucial. Given the enormous variations in time-periods between Member States, it is essential to establish a common average, since this will create fairer conditions for both asylum seekers and the Member States in terms of an equitable division of responsibilities.

Amendment 107
Article 23, paragraph 2, point (b)

b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. ***Such information shall not constitute an obligation for the Member State towards***

b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected, ***which shall not exceed 3 months.***

the applicant concerned to take a decision within that time frame.

Justification

Fast and effective procedures are crucial. Given the enormous variations in time-periods between Member States, it is essential to establish a common average, since this will create fairer conditions for both asylum seekers and the Member States in terms of an equitable division of responsibilities.

Amendment 108
Article 23, paragraph 3 a (new)

3a. Member States shall apply the regular procedure to particularly vulnerable persons, including separated children and persons who may have experienced trauma or sexual violence.

Justification

Applications by particularly vulnerable persons should be treated in a regular procedure as matter of principle.

Amendment 109
Article 23, paragraph 4, point (a)

(a) the applicant in submitting his/her application and presenting the fact, has only raised issues that are not relevant ***or of minimal relevance*** to the examination of whether he/she qualifies as a refugee by virtue of Council Directive 2004/83/EC; or

(a) the applicant in submitting his/her application and presenting the fact, has only raised issues that are not relevant to the examination of whether he/she qualifies as a refugee by virtue of Council Directive 2004/83/EC; or

Justification

The concept of minimal relevance is too vague.

Amendment 110
Article 23, paragraph 4, point (c)

(c) the application for asylum is considered to be unfounded:

- because the applicant is from a safe country of origin within the meaning of Articles 30, ***30A*** and 30B of this Directive,

(c) the application for asylum is considered to be unfounded

because the applicant is from a safe country of origin within the meaning of Articles 30 and 30B of this Directive, or

or

- because the country which is not a Member State is considered to be a safe third country for the applicant, without prejudice to Article 29(1); or

Justification

The possibility of prioritising or accelerating of the procedure should be permitted only in cases that are clearly fraudulent or manifestly unfounded.

Applicants who do not qualify for refugee status may nevertheless qualify for complementary/subsidiary protection.

Amendment 111

Article 23, paragraph 4, point (d)

(d) the applicant has misled the authorities by presenting false **information or documents or by withholding relevant information or documents** with respect to his/her identity and/or nationality **that could have had a negative impact on the decision;**
or

(d) the applicant, **with a fraudulent intent**, has misled the authorities by presenting false documents with respect to his/her identity and/or nationality; or

Justification

Terminology "false information" is too subjective.

Amendment 112

Article 23, paragraph 4, point (e)

(e) the applicant has filed another application for asylum stating other personal data; or

(e) the applicant, **with a fraudulent intent**, has filed another application for asylum stating other personal data; or

Justification

See justification of Article 23, paragraph 4, point d.

Amendment 113
Article 23, paragraph 4, point (f)

(f) the applicant has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, or, it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

(f) the applicant, ***with a fraudulent intent***, has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, or, it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

Justification

See justification of Article 23, paragraph 4, point d.

Amendment 114
Article 23, paragraph 4, point (g)

(g) the applicant has made inconsistent, contradictory, unlikely or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having being the object of persecution under Council Directive 2004/83/EC; or

deleted

Justification

Article 23 permits prioritisation or acceleration in a wide range of cases, the consequences of which are left largely to the Member States, and may lead to considerably reduced safeguards. Amongst others, the Directive permits States to dispense with personal interviews and other significant procedural requirements. Many such claims will not fall within the definition of “clearly abusive” or “manifestly unfounded” claims, which could be dealt with through an accelerated procedure, according to the conclusions of states and international bodies.

Amendment 115
Article 23, paragraph 4, point (o)

(o) the application was made by ***an unmarried*** minor to whom Article 5(4)(c) applies after the application of the parents or parent responsible for the minor has been rejected by a decision and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

(o) the application was made by ***a child*** to whom Article 5(4)(c) applies after the application of the parents or parent responsible for the minor has been rejected by a decision and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

Justification

The fact of an applicant who is a child being married, which may happen very early under some countries' traditions, is no reason to justify such a person being treated differently from other children.

Amendment 116
Article 23, paragraph 4 a (new)

4a. Member States shall take into consideration complementary/subsidiary protection needs when the procedure has been prioritised or accelerated according to paragraph 4 (a) to (o).

Justification

Applicants who do not qualify for refugee status may nevertheless qualify for complementary/subsidiary protection.

Amendment 117
Article 24

<i>Specific procedures</i>	<i>deleted</i>
<i>1. Member States may moreover provide for the following specific procedures derogating from the basic principles and guarantees of Chapter II:</i>	
<i>(a) a preliminary examination for the purpose of processing cases considered within the framework of the provisions set out in Section IV;</i>	
<i>(b) procedures for the purpose of processing cases considered within the framework set out in Section V.</i>	
<i>2. Member States may also provide a derogation in respect of Section VI.</i>	

Justification

The possibilities to derogate from minimum standards may lead to breaches of international law. There is no reason for requirements associated with due process of law in asylum claims submitted at the border to be less than those submitted within the territory or in cases of subsequent claims. This article fails to define clearly the principles and guarantees to which exceptions may or may not be made. Such an approach is not conducive to the objective of harmonisation of procedural standards, and increases the risk of refoulement.

Amendment 118
Article 25, paragraph 1 a (new)

1a. All applications for international protection will first be assessed on the basis of the refugee definition contained in the Geneva Convention and, only if these criteria are not fulfilled, on the basis of the requirements for subsidiary protection.

Justification

It is fundamental that any application first is considered under criteria of the Geneva Convention and, if these are not met, under the criteria for complementary/subsidiary protection in accordance with other legal obligations.

Amendment 119
Article 25, paragraph 2, introductory part

2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:

2. *Without prejudice to paragraph 1a,* Member States may consider an application for asylum as inadmissible pursuant to this Article if:

Justification

It is fundamental that any application first is considered under criteria of the Geneva Convention and, if these are not met, under the criteria for complementary/subsidiary protection in accordance with other legal obligations.

Amendment 120
Article 25, paragraph 2, point (c)

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27; ***deleted***

Justification

The cases of inadmissible applications can be evaluated only according to the Geneva Convention. All points from (c) to (g) are covered by new paragraph 1 a.

Amendment 121
Article 25, paragraph 2, point (f)

(f) the applicant has lodged an identical application after a final decision; ***deleted***

Justification

See justification of Article 25, paragraph 2, point c.

Amendment 122
Article 25, paragraph 2, point (f a) (new)

(fa) The applicant, when about to be expelled from the territory in which he or she is residing illegally, appeals to be given the possibility of enjoying right of asylum.

Justification

To prevent illegal immigrants who have been identified as such from declaring that they are being persecuted for political or other reasons and thus abusing the right of asylum.

Amendment 123
Article 27, paragraph 1, introductory part

1. Member States may apply the safe third country concept only where **the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the following principles in the third country concerned:**

1. Member States may apply the safe third country concept only where **the third country fulfils the following criteria:**

Justification

On the concept of "safe country": The question of whether a particular third country is 'safe' for the purpose of returning an asylum-seeker cannot be answered in a generic fashion, for example by 'national' designation of parliament, for all asylum-seekers in all circumstances. The question of whether asylum-seekers can be sent to a third country for determination of their claim must be answered on an individual basis. If not, the risk of chain refoulement arises. Also third countries have a role to play in the definition of the "safety" of a country and have to follow precise criteria.

Amendment 124
Article 27, paragraph 1, point (a)

(a) *life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion*; and

(a) *ratification and implementation in practice of the Geneva Convention and other international human rights treaties, in particular with reference to the principle of non-refoulement*; and

Justification

Reference to the Geneva Convention on Article 27, paragraph 1, point a (new) will cover this point as well.

Amendment 125
Article 27, paragraph 1, point (b)

(b) the principle of non-refoulement in accordance with the Geneva Convention is respected; and

(b) the principle of non-refoulement in accordance with the Geneva Convention is *in particular* respected; and

Justification

The non-refoulement principle is fundamental but not the only one to be respected under the Geneva Convention.

Amendment 126
Article 27, paragraph 2, point (a)

(a) rules requiring a *connection* between the person seeking asylum and the third country concerned based on which it would be reasonable for that person to go to that country;

(a) rules requiring a *meaningful link* between the person seeking asylum and the third country concerned based on which it would be reasonable for that person to go to that country;

Justification

"Meaningful link" is more appropriate than just "connection".

Amendment 127
Article 27, paragraph 2, point (c)

(c) rules, in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant *which, as a*

(c) rules, in accordance with international law *and, specifically, the Geneva Convention*, allowing an individual examination of whether the third country

minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.

concerned is safe for a particular applicant.

Justification

Reference to international law and the 1951 Convention will suffice.

Amendment 128

Article 27, paragraph 2, point (c a) (new)

(ca) the effective possibility for the applicants for asylum to rebut the presumption of safety, including in the first instance, even if on an accelerated basis.

Justification

The possibility to rebut the presumption of safety is the condition sine qua non for the acceptance of the "safe country" principle. The assessment of risk in the country of origin should always be conducted on an individual basis rather than on a general presumption on country-related criteria.

Amendment 129

Article 27, paragraph 4

4. Where the third country does not permit the applicant for asylum in question to enter its territory, Member States shall ensure that access to **a** procedure is given in accordance with the basic principles and guarantees described in Chapter II.

4. Where the third country does not permit the applicant for asylum in question to enter its territory, Member States shall ensure that access to **an asylum** procedure is given in accordance with the basic principles and guarantees described in Chapter II.

Justification

Access to asylum procedure must be specified to ensure applicants' right to asylum is safeguarded.

Amendment 130
Article 29, paragraph - 1 (new)

-1. Member States may reject an application for asylum as manifestly unfounded if the competent authority has established that the applicant in submitting his application and presenting the facts, has only raised issues that are obviously not relevant to the Geneva Convention.

Justification

Modification in line with the new text of Article 25.

Amendment 131
Article 29, paragraph 2

2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application, if it is so defined in the national legislation, as manifestly unfounded. ***deleted***

Justification

The cases mentioned in Article 23(4) have been deleted as not "manifestly unfounded".

Amendment 132
Article 30, title

Minimum common list of third countries as safe countries of origin ***Common*** list of third countries as safe countries of origin

Justification

The Rapporteur considers that the Member States who have not a list on safe countries should not be obliged to adopt it. Moreover the common list at European level should be the only list allowed, not a minimum one allowing Member States to have national lists.

Amendment 133
Article 30, paragraph 1

1. The Council shall, acting by a qualified majority on a proposal from the Commission **and after consultation of the European Parliament**, adopt a **minimum** common list of third countries that **shall** be regarded by Member States as safe countries of origin in accordance with **Annex II**.

1. The Council shall, acting by a qualified majority **and co-decision with the European Parliament** on a proposal from the Commission, adopt a common list of third countries that **may** be regarded by Member States as safe countries of origin in accordance with **Annex B to the Annex I**.

Justification

The list of safe countries, which will be established not by this Directive, but by a further legislative act, shall be agreed in co-decision by the Council and the European Parliament. In fact, according to the EC Treaty (article 67-§5, first indent), once the Council has adopted the legislation defining the common rules and basic principles on asylum, the procedure to apply is the co-decision one. The Rapporteur considers that the Member States who have not a list on safe countries should not be obliged to adopt it.

Amendment 134
Article 30, paragraph 2

2. The Council may, acting by a qualified majority on a proposal from the Commission **and after consultation of the European Parliament**, amend the **minimum** common list by adding or removing third countries, in accordance with **Annex II**. The Commission shall examine any request made by the Council or by a Member State that it submits a proposal to amend the **minimum** common list.

2. The Council may, acting by a qualified majority **and co-decision with the European Parliament** on a proposal from the Commission **and in accordance with Article 251 of the Treaty**, amend the common list by adding or removing third countries, in accordance with **Annex B to the Annex I**. The Commission shall examine any request made by the Council, **by the European Parliament** or by a Member State that it submit a proposal to amend the common list.

Justification

See justifications to Article 30 - subtitle and Article 30, paragraph 1.

Amendment 135
Article 30, paragraph 3

3. When making its proposal under

3. When making its proposal under

paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, *where necessary*, information from UNHCR, the Council of Europe and other relevant international organisations.

paragraphs 1 or 2, the Commission shall make use of information from the Member States *and the European Parliament*, its own information and information from UNHCR, the Council of Europe and other relevant international organisations.

Justification

See amendment 6.

Amendment 136
Article 30, paragraph 4

4. Where the Council *requests* the Commission to submit a proposal for removing a third country from the *minimum* common list, the *obligation* of Member States pursuant to Article 30B(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

4. Where the Council *or the European Parliament request* the Commission to submit a proposal for removing a third country from the common list, the *right* of Member States pursuant to Article 30B(2) shall be suspended with regard to this third country as of the day following the Council *or European Parliament* decision requesting such a submission.

Justification

See justifications to Article 30 - subtitle and Article 30, paragraph 1.

Amendment 137
Article 30, paragraph 5

5. Where a Member State *requests* the Commission to submit a proposal to the Council for removing a third country from the *minimum* common list, that Member State shall notify the Council in writing of the request made to the Commission. The *obligation* of this Member State pursuant to Article 30B(2) shall be suspended with regard to the third country as of the day following the notification of the request to the Council.

5. Where a Member State *or the European Parliament request* the Commission to submit a proposal to the Council for removing a third country from the common list, that Member State *or the European Parliament* shall notify the Council in writing of the request made to the Commission. The *right* of this Member State pursuant to Article 30B(2) shall be suspended with regard to the third country as of the day following the notification of the request to the Council.

Justification

See justifications to Article 30 - subtitle and Article 30, paragraph 1.

Amendment 138
Article 30, paragraph 7

7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal, before the end of this period, to withdraw the third country from the *minimum* common list. The suspensions shall end in any case where the Council *rejects*, a proposal by the Commission to withdraw the third country from the list.

7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal, before the end of this period, to withdraw the third country from the common list. The suspensions shall end in any case where the Council ***and/or the European Parliament reject*** a proposal by the Commission to withdraw the third country from the list.

Justification

See justifications to Article 30 - subtitle and Article 30, paragraph 1.

Amendment 139
Article 30, paragraph 8

8. Upon request by the Council, the Commission shall report to the Council and the European Parliament on whether the situation of a country on the *minimum* common list is still in conformity with ***Annex II***. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.

8. Upon request by the Council ***or the European Parliament***, the Commission shall report to the Council and the European Parliament on whether the situation of a country on the common list is still in conformity with ***Annex B to the Annex I***. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.

Justification

See justifications to Article 30 - subtitle and Article 30, paragraph 1.

Amendment 140
Article 30 A

Article 30A
National designation of third countries as safe countries of origin
1. Without prejudice to Article 30, Member States may retain or introduce legislation that allows, in accordance with

deleted

Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purpose of examining applications for asylum. This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that part.

2. By derogation to paragraph 1, Member States may retain legislation in force at the time of adoption of this Directive that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:

(a) persecution as defined in Article 9 of Council Directive 2004/83/EC; nor
(b) torture or inhuman or degrading treatment or punishment.

3. Member States may also retain legislation in force at the time of the adoption of this Directive that allows for the national designation of part of a country as safe or a country or part of a country as safe for a specified group of persons in that country where the conditions in paragraph 2 are fulfilled in relation to that part or group.

4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.

5. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations.

6. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with the provisions of this Article.

Justification

The rapporteur is against the possibility to keep or to create national lists of "safe countries of origin".

Amendment 141

Article 30 B, paragraph 1, introductory part

1. A third country designated as a safe country of origin **either** in accordance with the provisions of Article 30 **or 30A** can, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:

1. A third country designated as a safe country of origin in accordance with the provisions of Article 30 can, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:

Justification

The Article 30 A has been deleted.

Amendment 142

Article 30B, paragraph 1, final part

and he/she has not submitted any **serious** grounds for considering the country not to be a safe country of origin in his/her particular circumstances in terms of his/her qualification as a refugee in accordance with Council Directive 2004/83/EC.

and he/she has not submitted any grounds for considering the country not to be a safe country of origin in his/her particular circumstances in terms of his/her qualification as a refugee in accordance with Council Directive 2004/83/EC.

Justification

Original terminology is too subjective.

Amendment 143

Article 30 B, paragraph 2

2. Member States **shall**, in accordance with paragraph 1, consider the application for asylum as unfounded where the third

2. Member States **may**, in accordance with paragraph 1, consider the application for asylum as unfounded where the third

country is designated as safe *pursuant to Article 30*.

country is designated as safe *for the particular applicant*.

Justification

It should not be an obligation for Member States to apply the principle of third safe country of origin.

Amendment 144
Article 30B, paragraph 3

3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept, *in line with international law, and will duly notify the Commission of any further rules and modalities*.

Justification

International law must be respected, and the Commission must be kept up-to-date of any national developments.

Amendment 145
Article 33, paragraph 1

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State *may* examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State *shall* examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework or the examination of the decision under review or appeal insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

Justification

Given the need for flexibility in dealing with submissions by asylum applicants, in particular

the cases of victims of trauma and torture, Member States should be obligated to examine all further representations, in line with ECHR and UNCAT case law.

Amendment 146

Article 33, paragraph 2, introductory part

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum, ***provided the initial application is not currently open to appeal:***

Justification

Stopping the application while it is still open to appeal runs contrary to applicants' rights as outlined in 1951 Convention and international law, in particular the principle of non-refoulement.

Amendment 147

Article 34, paragraph 1

1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 33 enjoy the guarantees listed in Article 9 (1).

1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 33 enjoy the guarantees listed in Article 9 (1) ***and should in principle be subject to the minimum procedural standards of this Directive.***

Amendment 148

Article 34, paragraph 2, point (b)

(b) require submission of the new information by the applicant concerned within a time limit after which it has been obtained by him or her;

(b) require submission of the new information by the applicant concerned within a ***specified*** time limit after which it has been obtained by him or her,

Justification

Time limits must be clearly outlined, so to ensure the applicant is given due consideration.

Amendment 149
Article 35, paragraph 1

1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide, at the border or transit zones of the Member State, on the applications made at such locations.

1. Member States may provide for procedures, ***in compliance with the international conventions and*** in accordance with the basic principles and guarantees of Chapter II, in order to decide, at the border or transit zones of the Member State, on the applications made at such locations.

Justification

Taking into account all the possible forms of protection for applicants for asylum, only in the event of threats to national security and public order may a Member State decide not to allow an applicant for asylum to enter its territory.

Amendment 150
Article 35, paragraph 1 a (new)

1a. Member States shall ensure that a decision to refuse entry to the territory of a Member State for a reason arising from the application for asylum is taken within two weeks, subject to an extension of the time limit for no more than two weeks agreed upon by a competent judicial body in a procedure prescribed by law.

Justification

The principle of non-discrimination requires that all asylum-seeker, irrespective of whether they apply at the border or inside the country, benefit from the same basic principles and guarantees. There is no reason for requirements of due process of law in asylum cases submitted at the border to be less than for those submitted within the territory. Differences in safeguards may compel asylum-seekers and refugees to enter and stay illegally, in order to be assured of higher standards in the asylum procedure. A specific procedure could be allowed but under the same basic principles and guarantees ensured by the Directive.

Amendment 151
Article 35, paragraph 1 b (new)

1b. Non-compliance with the time limits provided for in paragraph 1a shall result in the applicant for asylum being granted

entry to the territory of the Member State in order for his application to be processed in accordance with the other provisions of this Directive. Member States shall ensure that applicants for asylum, who are refused entry in accordance with this procedure, enjoy the guarantees referred to in Chapter V.

Justification

See justification to article 35, paragraph 1 a (new).

Amendment 152
Article 35, paragraph 1 c (new)

1c. The refusal of entry into the territory can not override the decision on the application for asylum after an examination on the basis of the facts of the case by authorities competent in the field of asylum and refugee law.

Justification

See justification to article 35, paragraph 1 a (new).

Amendment 153
Article 35, paragraph 2

2. However, when procedures as set out in paragraph 1 do not exist, Member States may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force at the time of the adoption of this Directive, procedures derogating from the basic principles and guarantees described in Chapter II, in order to decide, at the border or in transit zones, on the permission to enter their territory of applicants for asylum who have arrived and made an application for asylum at such locations. *deleted*

Justification

See justification to article 35, paragraph 1 a (new).

Amendment 154
Article 35, paragraph 3

3. The procedures referred to in paragraph 2 shall ensure in particular that the persons concerned: ***deleted***

- shall be allowed to remain at the border or transit zones of the Member State, without prejudice to Article 6; and

- must be immediately informed of their rights and obligations, as described in Article 9 (1) (a); and

- have access, if necessary, to the services of an interpreter, as described in Article 9 (1) (b); and

- are interviewed, before the competent authority takes a decision in such procedures, in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 10 to 12; and

- can consult a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 13 (1); and

- have a representative appointed in the case of unaccompanied minors, as described in Article 15 (1), unless Article 15(2) or (3) applies.

Moreover, in case permission to enter is refused by a competent authority, this competent authority shall state the reasons in fact and in law why his/her application for asylum is considered as unfounded or as inadmissible.

Justification

See justification to article 35, paragraph 1 a (new).

Amendment 155
Article 35, paragraph 4

**4. Member States shall ensure that a *deleted*
decision in the framework of the
procedures provided for in paragraph 2 is
taken within a reasonable time. When a
decision has not been taken within four
weeks, the applicant for asylum shall be
granted entry to the territory of the
Member State in order for his/her
application to be processed in accordance
with the other provisions of this Directive.**

Justification

See justification to article 35, paragraph 1 a (new).

Amendment 156
Article 35, paragraph 5

**5. In the event of particular types of *deleted*
arrivals or arrivals involving a large
number of third country nationals or
stateless persons lodging applications for
asylum at the border or in a transit zone,
which makes it practically impossible to
apply there the provisions of paragraph 1
or the specific procedure set out in
paragraphs 2 and 3, those procedures may
also be applied where and for as long as
these third country nationals or stateless
persons are accommodated normally at
locations in proximity to the border or
transit zone.**

Justification

See justification to article 35, paragraph 1 a (new).

Article 35A

deleted

- 1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II takes place in cases where a competent authority has established, on the basis of the facts, that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.**
- 2. A third country can only be considered as a safe third country for the purpose of paragraph 1 where:**
 - (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations; and**
 - (b) it has in place an asylum procedure prescribed by law; and**
 - (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and it observes its provisions, including the standards relating to effective remedies; and**
 - (d) it has been so designated by the Council in accordance with paragraph 3.**
- 3. The Council shall, acting by qualified majority on the proposal of the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.**
- 4. Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement under the Geneva Convention including providing for exceptions from the application of this Article for humanitarian or political**

reasons or for reasons of public international law.

5. When implementing a decision solely based on this Article, Member States concerned shall:

**(a) inform the applicant accordingly; and
(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.**

6. Where the safe third country does not readmit the applicant for asylum in question, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

7. Member States which have designated third countries as safe countries in accordance with national legislation in force at the date of the adoption of this Directive and on the basis of the criteria in paragraph 2(a) to (c), may apply paragraph 1 to these third countries until such time as the Council has adopted the common list pursuant to paragraph 3.

Justification

The concept of the so called "super safe country" is far more unacceptable compare to the safe country principle because no minimum principles and guarantees apply to this procedure and access to the asylum procedure and territory may be denied altogether. Such denial risks being a violation of international refugee law. No category of applicant should be denied access to an asylum procedure completely. UNHCR also strongly recommends the deletion of this article, which was not foreseen in the Commission proposal.

Amendment 158

Article 36

Member States **shall ensure that an examination may be started** to withdraw the refugee status of a particular person **when new elements or findings arise indicating that there are reasons to reconsider the validity of his/her refugee status.**

Member States **may begin** to withdraw the refugee status of a particular person **if:**

Justification

Initial Article was too vague and open to misuse. It has been redrafted to ensure conformity with 1951 Convention.

Amendment 159
Article 36, point (a) (new)

(a) the applicant has voluntarily re-availed himself/herself of the protection of the country of his/her nationality; or

Justification

Follows Amendment to Article 36.

Amendment 160
Article 36, point (b) (new)

(b) having once lost it, the applicant has voluntarily reacquired his/her nationality; or

Justification

Follows Amendment to Article 36.

Amendment 161
Article 36, point (c) (new)

(c) the applicant has acquired a new nationality, and enjoys the protection of the country of the new nationality; or

Justification

Follows Amendment to Article 36.

Amendment 162
Article 36, point (d) (new)

(d) the applicant has voluntarily re-established residence in the country to which he/she would at one time not return

because of fear of persecution.

Justification

Follows Amendment to Article 36.

Amendment 163
Article 37, paragraph 4

4. By derogation to paragraphs 1, 2 and 3, Member States may decide that the refugee status lapses by law in case of cessation in accordance with Article 11(1), subparagraphs (a), (b), (c) and (d) of Council Directive 2004/83/EC or if the refugee has unequivocally renounced his/her recognition as a refugee. *deleted*

Justification

Applicants' rights unprotected as no procedural guarantees must be respected in the original text.

Amendment 164
Article 38, paragraph 1, point (a), point (iii)

(iii) not to conduct an examination pursuant to Article 35A; *deleted*

Justification

Deletion linked to the deletion of Article 35 A.

Amendment 165
Article 38, paragraph 1, point (d)

(d) a decision refusing entry within the framework of the procedures provided for under Article 35 (2);

(d) a decision refusing entry within the framework of the procedures provided for under Article 35;

Justification

Linked to modification in article 35.

Amendment 166
Article 38, paragraph 3, introductory part

3. Member States shall, *where appropriate, provide for rules in accordance with their international obligations dealing with:*

3. Member States shall *ensure that the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State pending its outcome.*

Justification

Many refugees in Europe are recognised only during the appeal process. Given the potentially serious consequences of an erroneous determination at first instance, the suspensive effect of asylum appeals is a critical safeguard. The principle of effective remedy is a general principle of international law and it is embodied in EC Law (e.g. C-222/84), In Article 47 of the Charter of Fundamental Rights of the European Union and in Article 13 of the European Convention of Human Rights. As held by the European Court of Human Rights, it implies the right to remain in the territory of a Member State until a final decision on the application has been taken.

Amendment 167
Article 38, paragraph 3, point (a)

(a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome; and *deleted*

Justification

See the justification to article 38, paragraph 3, introductory phrase.

Amendment 168
Article 38, paragraph 3, point (b)

(b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex officio remedy; and *deleted*

Justification

See the justification to article 38, paragraph 3, introductory phrase.

Amendment 169
Article 38, paragraph 3, point (c)

(c) the grounds of challenge to a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c). *deleted*

Justification

See the justification to article 38, paragraph 3, introductory phrase.

Amendment 170
Article 38, paragraph 5

5. Where an applicant has been granted a status, which offers the same rights and benefits under national and Community law as the refugee status by virtue of Council Directive 2004/83/EC, the applicant may be considered to have an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings. *deleted*

Justification

See the justification to article 38, paragraph 3, introductory phrase.

Amendment 171
Article 38, paragraph 6

6. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed. *deleted*

Justification

For the sake of uniformity and consistency with the previous amendments, reference to the international conventions is also made here. Paragraph 6 is deleted in view of the need not to allow each individual Member State to make derogations from the minimum rules laid down in this Directive.

Amendment 172
Article 43, paragraph 1

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after the date of its adoption]. ***Concerning Article 13, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [36 months after the date of its adoption].*** They shall forthwith inform the Commission thereof.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after the date of its adoption]. They shall forthwith inform the Commission thereof.

Justification

Article 13 be adopted on equal footing with the rest of the Directive, to ensure non-refoulement is adhered to.

Amendment 173
Annex B to the Annex I, paragraph 1

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Council Directive 2004/83/EC; no torture or inhuman or degrading treatment or punishment; ***and*** no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Council Directive 2004/83/EC; no torture or inhuman or degrading treatment or punishment; no threat by reason of indiscriminate violence in situations of international or internal armed conflict; ***and no evidence of discrimination against individuals on account of race, ethnic background, religion, nationality, membership of a particular social group or political opinion.***

Justification

This is in keeping in line with Article 27, and the 1951 Convention.

Amendment 174

Annex B to the Annex I, paragraph 2, point (d a) (new)

(da) available and up-to-date reports by the UNHCR and other organisations working in the field of human rights and the protection of individual rights.

Justification

If the list of safe countries of origin is to be concise, a clear picture of the country's practice of implementing the relevant laws and regulations is necessary for an accurate assessment.

EXPLANATORY STATEMENT

Background

Realising a common domestic policy in the field of asylum and migration due to the agreement of Tampere and the following up agreements, the European Union faces big challenges. The European Commission has developed proposals in the framework of this policy to the minimum standards on procedures for granting and withdrawing refugee status, which were presented for evaluation to the Council as well as to the Parliament. The further proceeding foresees that in the framework of the consultation process, the European Parliament will participate. However, the agreements of Tampere and the implementation of the Hague programme have foreseen the introduction of codecision for the European Parliament in the field of asylum and migration policies.

The European Commission presented its first proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status already on September 2000.

On 20 September 2001, the European Parliament adopted the Watson report, approving the Commission proposal with 106 amendments. The negotiations in the Council did not produce an agreement on that draft and in December 2001 the European Council, in the Laeken declaration, requested the Commission to bring forward a modified proposal.

The new draft directive was issued on 18 June 2002. After almost two years of negotiations, on 29 April 2004 the Council agreed on a "general approach", on which, it decided to consult again the Parliament (19 November 2004).

Position of the rapporteur

The fact that the Council reached a political agreement before receiving the opinion of the Parliament contradicts the spirit of the European Treaties as well as it contradicts the agreements of the presented documents. So the Parliament has not been asked to exercise its full powers. Therefore the Rapporteur thinks that the Council failed to respect the principle of loyal cooperation between the institutions.

Moreover, the rapporteur is of the opinion that the time-consuming negotiations in the Council have not produced a satisfactory conclusion. The rapporteur believes that the participation of the European Parliament in this process would have led to a much better result.

The rapporteur is primarily concerned by the fact that the procedure apparently will result in the undermining of standards with regard to definitions laid down in international conventions, such as the Geneva Convention concerning the rights of refugees, the UN-convention on children's rights and other fundamental codices.

Additionally the rapporteur is concerned by the fact that the planned first step in the harmonisation of the asylum procedure in the presented form is not satisfactory and even

inappropriate, as the Parliament had already concluded back in 2001 when evaluating the first proposal of the Commission:

- The directive does not achieve significant progress in harmonisation.
- Discretion is left to Member States to retain their national laws, through the many "may" provisions, exceptions and stand still clauses.
- The aim to build a simple, clear and easy-to-access legal structure has been failed. The amended proposal sets out a new structure for asylum procedures in the Member States and the "general approach" text departs from a considerable number of minimum standards originally proposed by the Commission. The current text provides for a great number of substantial exceptions and limitations, which would even allow some Member States to lower their procedural standards. The "level playing field" is therefore reduced to a catalogue of national practices, including many which are not in line with international best practices.

Due to the same reasons the European Parliament had already advised the Commission to withdraw and substantially revise the first proposal in the Watson report 2001. As well as the UNHCR back then and today expressed its deep concerns about a number of restrictive and highly controversial practices that are currently only contained in one or two member states national legislation but could be inserted in the legislation of all 25 EU Member States.

The rapporteur's urgent suggestion

Though some Member States have no legislation on asylum, like Italy, the proposed Directive will improve only marginally the state of affairs in other Member States; as a matter of fact, it could definitely be a step back for some of them!

Considering all the facts mentioned before, the rapporteur concludes that the Parliament should only adopt the proposed directive under the condition, that its amendments, particularly with regard to the following points, will be implemented by the Council in the suggested way and with regard to the Parliament's future privilege of codecision.

1.) The rapporteur regards the concept of the so-called super safe countries to be inappropriate and rejects it in principle:

This is one of the most alarming aspects of the Directive. The Directive assumes that the level of protection available in countries neighbouring the European Union is equivalent to standards in EU Member States. It provides that Member States may deny access to the procedure to all asylum seekers who come from these countries. These provisions do not require an individual assessment and appear to be against the *non-refoulement* principle.

2.) The rapporteur puts forward his urgent demand to check the safe-third country concept with regard to the actual practice concerning the possible violation of the Geneva Convention and the European Convention for the protection of human rights and fundamental rights to change it in the suggested way.

According to the UNHCR, it is not possible to designate third countries generally as "safe", without considering the individual case. There are significant concerns about the effectiveness in practice of asylum procedures in the countries of transit at the periphery of the Union,

which raise questions about whether they can legitimately be considered "safe". Moreover the Directive allows Member States to remove asylum-seekers to any country willing to accept them, without any consideration of merits of their claims. It allows Member States to shift their responsibilities to third countries, regardless of whether the applicant will be protected against *refoulement* and treated on a case by case basis.

3.) The concepts of effective remedy (article 38) and accelerated procedures (articles 23-25) as well as the procedures on borders (Case of border procedures - article 35) have to be revised substantially. This as well with regard to a future repatriation agreement:

- The article about the **effective remedy** does not guarantee that the appeal process has suspensive effect. It means that there is not an explicit right for all asylum seekers to remain in the asylum country waiting for the outcome of the appeal procedure. This question is left to the Member States' discretion. Such a provision would appear to be contrary to the Geneva Convention and does not insure the respect for the principle of "*non-refoulement*"
- The Directive allows **fast-track procedures** in a too wide range of cases. Accelerated, inadmissibility and special procedures include several exceptions from basic safeguards, especially when an application is considered ill founded. Given the extremely broad definition of "manifestly unfounded claims", Amnesty International fears that most of the applications (more than 80%) will be processed under a fast-track procedure, thus implying that lower procedural safeguards will apply¹. But refugees might not be able to provide consistent or comprehensive answers for serious personal and human reasons, like trauma (for example war, post-traumatic stress, sexual violence, etc.).
- The Directive permit member States to apply **border procedures** which entail less than minimum procedural safeguards for people requesting asylum at border or transit zones. This practices place inappropriate powers and responsibilities in the hands of border guards and confuses migration control objectives with protection of refugees.

4.) The rapporteur has specific doubts concerning the regulations for children and juveniles in the framework of the refugee policy laid down in the Council's conclusion:

The Directive states that Member States may "refrain from appointing a representative where the unaccompanied minor is 16 years old or older...". According to the UN-Convention on the Rights of the Child, any person under age 18 should be considered as a child, without differentiation in rights for those over 16. Moreover the fact that the child is or has been married does not necessarily indicate that she/he is not in need of a representative. Marriage in some countries is not related to the maturity of the child.

Conclusion of the rapporteur

The rapporteur is of the opinion that only if the doubts mentioned before are met, there will be a possibility for a common asylum policy in the European Union which is legitimised by our citizens and which meets the needs of refugees for protection in like manner. The Parliament is the legitimate representative of the citizens. Only with a transparent and democratic procedure, which corresponds to the difficulty of the subject, can we attain the constant consent of the people.

Due to these severe reservations, the rapporteur expects the Council to give his opinion concerning the major concerns mentioned before and the further proceeding in due time.

25.5.2005

OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Committee on Civil Liberties, Justice and Home Affairs

on the amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (14203/2004 - C6-0200/2005 - 2000/0238(CNS))

Draftswoman: Felekna Uca

SHORT JUSTIFICATION

BACKGROUND

1. According to the Conclusions of the Presidency at the Tampere European Council in October 1999, restated by the Hague Programme adopted by the Brussels European Council in November 2004, a common European asylum system is to include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers and the approximation of rules on the recognition and content of the refugee status. This is to be supplemented with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.
2. The European Commission presented its first proposal for a Directive¹ on minimum standards on procedures in Member States for granting and withdrawing refugee status in September 2000. On 20 September 2001, the European Parliament adopted the Watson report, approving the Commission proposal with 106 amendments. The negotiations in the Council did not produce an agreement on the basis of that draft and in December 2001 the European Council, in the Laeken declaration, requested the Commission to bring forward a modified proposal.
3. The modified draft proposal for a directive was issued on 18 June 2002² and after almost two years of negotiations the Council agreed on a "general approach"³ on which it decided to consult the Parliament again, which was done on 19 November 2004. Therefore, the amendments proposed in this opinion refer to the modified draft proposal for a directive, as amended by the Council in its "general approach".
4. The Directive is to be adopted, in accordance with Article 63(1)(d) TEC, by consultation procedure of the Parliament and by unanimity vote in the Council. After the adoption of this directive, and in accordance with Article 67 TEC, all the legislation in this field is to be adopted by codecision procedure and majority voting in the Council.

¹ COM(2000)0578.

² COM(2002)0326.

³ CSL 14203/04, 9.11.2004

5. It is your draftperson's view that the opinion of the Committee on Development should be confined to the areas where its competencies might be affected, and, notably, areas such as the political dialogue with developing countries, the promotion of democratic values, good governance and human rights in developing countries, and matters relating to the ACP-EU Partnership Agreement.
6. That is the reason why the opinion submitted for the consideration of the Committee on Development does not enter into more technical areas falling under the direct competency of the Committee on Civil Liberties, Justice and Home Affairs as the leading Committee.
7. Having said that, your draftperson considers that the modified Commission proposal, as amended by the 'general approach' adopted by the Council on 29 April 2004, is a considerable step back compared to the initial proposal and to the objectives set by the Commission itself: *'the main aim of this Directive is to introduce a minimum framework in the European Community on procedures for the determination of refugee status, ensuring that no Member State expels or returns an applicant for asylum in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'*¹.
8. In particular, your draftperson would like to draw the Members' attention to the fact that the 'general approach' adopted by the Council provides for possibilities for Member States to derogate from almost every provision, and especially from the basic principles and guarantees established in Chapter II of the directive (Article 24). Under these circumstances, the rights and guarantees of applicants become fragile, and the basis for appeals might always be turned down as unfounded. Your draftsman has decided not to present amendments related to these issues at this stage, since it would involve substantial changes of a technical character which are better dealt by other Committees (such as LIBE or JURI). However, in the event that such Committees do not take account of these concerns, your draftsman will consider presenting them either in the Development Committee at a later stage, as amendments, or in plenary.

AMENDMENTS

The Committee on Development calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Council²

Amendments by Parliament

Amendment 1

Article 3, paragraph 1, point (a) (new)

(a) This Directive shall be implemented and transposed into national legislation with due respect for fundamental human rights

¹ COM(2002)0326.

² CSL 14203/04, 9.11.2004

and principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law. International law and United Nations agreements shall be observed.

Justification

The necessity to respect fundamental human rights, with a specific reference to the Charter of Fundamental Rights of the EU, as well as all existing international law commitments needs to be underscored outside Chapter II (subject to a number of derogations).

Amendment 2

Article 3, paragraph 1, point (b) (new)

(b) This Directive shall be implemented and transposed into national legislation with due respect for all the existing international obligations of the EU and its Member States and, in particular, the Geneva Convention and partnership and cooperation agreements concluded with third countries.

Justification

See amendment 1.

Amendment 3

Article 5, paragraph 5 a (new)

5a. Member States shall ensure that each person who wishes to make an asylum application promptly receives exhaustive information about the procedure and his/her rights and obligations, in his/her own language.

Justification

The right to receive full information in a language understandable to the applicant is essential to ensure that the procedure is applied in a fair manner.

Amendment 4
Article 15, paragraph 2, point (c)

(c) is married or has been married. **deleted**

Justification

The fact that a minor is married or has been married could in no way be considered as a factor of maturity. This is especially relevant in some developing countries where forced marriages of girls at a very early age are usual.

Amendment 5
Article 17, paragraph 1

1. Member States shall not hold a person in detention for the **sole** reason that he/she is an applicant for asylum.

1. Member States shall not hold a person in detention for the reason that he/she is an applicant for asylum.

Justification

An asylum application cannot constitute a reason for holding a person in detention.

Amendment 6
Article 30, paragraph 2

2. The Council may, acting **by a qualified majority on a proposal from the Commission and after consultation of the European Parliament**, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council **or** by a Member State that it submit a proposal to amend the minimum common list.

2. The Council may, acting **in accordance with the procedure laid down in Article 251 of the EC Treaty**, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council, by a Member State **or by the European Parliament** that it submit a proposal to amend the minimum common list.

Justification

The aim of this amendment is to fully integrate the European Parliament in any further decision involving the adoption and modification of the minimum common list of third countries regarded as safe countries of origin. In fact, according to Article 67 TEC, after the approval of this Directive further decisions should be adopted with the codecision procedure. The adoption and modification of such a sensitive element as the minimum common list of third countries regarded as safe countries of origin should not be an exception and therefore the European Parliament should be fully involved in its adoption and modification.

Amendment 7
Article 30, paragraph 3

3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.

3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States **and the European Parliament**, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.

Justification

See amendment 6.

Amendment 8
Article 30, paragraph 4

4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 30B(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

4. Where the Council **or the European Parliament** requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 30B(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

Justification

See amendment 6.

Amendment 9
Article 30, paragraph 8

8. Upon request by the Council, the Commission shall report to the Council and the European Parliament on whether the situation of a country on the minimum common list is still in conformity with Annex II. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.

8. Upon request by the Council **or the European Parliament**, the Commission shall report to the Council and the European Parliament on whether the situation of a country on the minimum common list is still in conformity with Annex II. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.

Justification

See amendment 6.

Amendment 10
Article 30A, paragraph 2

2. By derogation to paragraph 1, Member States may retain legislation in force at the time of adoption of this Directive that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are **generally** neither subject to:

- (a) persecution as defined in Article 9 of Council Directive 2004/83/EC; nor
- (b) torture or inhuman or degrading treatment or punishment.

2. By derogation to paragraph 1, Member States may retain legislation in force at the time of adoption of this Directive that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are neither subject to:

- (a) persecution as defined in Article 9 of Council Directive 2004/83/EC; nor
- (b) torture or inhuman or degrading treatment or punishment; **nor**
- c) discrimination in any form on the basis of religion, ethnic origin, political belief, race or sex.**

Justification

Persecution, torture and inhuman or degrading treatment or punishment are sufficiently grave possibilities. It should be stated for certain, and not 'generally', that third country nationals will not suffer any of these treatments should their application be rejected.

Amendment 11
Article 35A, paragraph 3

3. The Council shall, acting **by qualified majority on the proposal of the Commission and after consultation of the European Parliament**, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.

3. The Council shall, acting **in accordance with the procedure laid down in Article 251 of the EC Treaty**, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.

Justification

See amendment 6.

Amendment 12
Article 35, paragraph 4

4. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 2 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant for asylum shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive.

4. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 2 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant for asylum shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive. ***During this maximum four-week period, the applicant for asylum shall have the right to communicate with members of his/her family and with his/her legal representatives and to receive the necessary support and assistance.***

PROCEDURE

Title	Amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status
References	14203/2004 - C6-0200/2005 - 2000/0238(CNS)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	DEVE 1.12.2004
Enhanced cooperation	
Drafts(wo)man Date appointed	Feleknas Uca 16.3.2005
Discussed in committee	12.5.2005 24.5.2005
Date amendments adopted	24.5.2005
Result of final vote	for: 28 against: 0 abstentions: 0
Members present for the final vote	Margrete Auken, Alessandro Battilocchio, Margrietus van den Berg, Danutė Budreikaitė, Nirj Deva, Michael Gahler, Jana Hybášková, Filip Andrzej Kaczmarek, Glenys Kinnock, Ģirts Valdis Kristovskis, Maria Martens, Miguel Angel Martínez Martínez, Luisa Morgantini, Toomas Savi, Jürgen Schröder, Feleknas Uca, Anna Záborská, Jan Zahradil, Mauro Zani
Substitutes present for the final vote	John Bowis, Fiona Hall, Linda McAvan, Manolis Mavrommatis, Karin Scheele, Britta Thomsen, Zbigniew Zaleski, Gabriele Zimmer
Substitutes under Rule 178(2) present for the final vote	Agustín Díaz de Mera García Consuegra

20.6.2005

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (14203/2004 – C6-0200/2004 – 2000/0238(CNS))

Draftswoman: Viktória Mohácsi

SHORT JUSTIFICATION

I. Summary of the proposal

Background:

The aim of this Directive is to establish minimum standards at the Community level for asylum procedures in Member States in which refugee status is granted or withdrawn.

A conclusion reached by 15 members of the Presidency at the Tampere European Council in 1999 states that, in the long term Community rules should lead to a common asylum procedure in the European Union, and that the minimum standards for procedures in the Member States are only a first step towards further harmonisation on procedural rules.

An important aspect in the Tampere conclusions, and of the Hague programme, is the foreseen introduction of codecision for the European Parliament in the field of asylum and migration policies.

The Commission's initial proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status was presented in September 2000.

On 20 September 2001, the European Parliament adopted the Watson report, approving the Commission proposal with 106 amendments. The negotiations in the Council did not produce an agreement on that draft and in December 2001 the European Council, in the Laeken declaration, requested the Commission to bring forward a modified proposal.

On 18 June 2002, a reconsultation was launched. Nearly two years of negotiations followed, before Council settled on a common action plan for which it approached Parliament for a second consultation on the 19 November 2004.

II. Draftswoman's comments

General goal:

Your draftswoman is in full agreement that a common Community policy is required in the field of asylum. However, she expresses serious concerns that it would fall short of accepted

international legal standards and could risk breaching Member States' obligations under the European Community's Charter of Fundamental Rights in addition to international and human rights refugee law.

In particular, she draws attention to the concept of "super-safe" third country provisions and non-suspensory appeals. Such a provision would allow applicants to be returned pending their appeals, and runs directly contrary to the principle of *non-refoulement* as laid out in the 1951 Geneva Convention on Refugees, which is considered the basis for international refugee law.

There are also fears that the Directive will not provide a harmonised Community policy, but rather embeds into law the policy of each Member retaining its own practice in the field. This is evident in the numerous exceptions tabled throughout the text, allowing Members to derogate from the Directive's provisions safeguarding applicants' rights.

Your draftsman highlights the main areas where she fears applicants' interests are being downgraded: the right to a personal interview with a qualified interpreter, access to and allocation of resources for legal assistance, access to UNHCR and other civil society organisations working in the field, limits concerning submission of documents and rights to appeal, as well, the emphasis on the applicant's responsibility to produce relevant documents. This ignores the widespread illegal trade in trafficking, in which traffickers often force claimants to destroy all identification to avoid detection of the smugglers by law enforcement. Another concern is a practice in the Directive of adopting terminology which is broader and vaguer than accepted international standards.

Failing to guarantee an asylum process which is fair, just and efficient, due to cutting corners in administration and legal costs runs a high risk of placing the claimant's safety in jeopardy with fatal results. Violating the principle of *non-refoulement* risks the Directive failing to hold in an international court of law and fails to guarantee fundamental rights.

Your draftsman regrets that the Council has already reached a political agreement on the present proposal, effectively disregarding the Parliament's role in the consultation process. She hopes that Council will respect Parliament's urgings to as soon as possible, adopt the changes as laid out in Tampere and the Hague programme.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Council ¹	Amendments by Parliament
	Amendment 1 Recital 5
(5) The main objective of this Directive is to introduce a minimum framework in the	(5) The main objective of this Directive is to introduce a minimum framework in the

¹ Not yet published in OJ.

European Community on procedures for granting and withdrawing refugee status.

European Community on procedures for granting and withdrawing refugee status, ***keeping in line with international standards, in particular the 1951 Geneva Convention on Refugees and the Tampere conclusions on asylum.***

Justification

In order to ensure this Directive holds under the court of law, it must be in line with the 1951 Convention and others, namely the Tampere conclusions on asylum.

Amendment 2
Recital 8

(8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, ***and by international obligations, in particular the 1951 Geneva Convention.***

Justification

It must be underscored that this Directive is in keeping with international law.

Amendment 3
Recital 9

(9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

(9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit ***all forms of*** discrimination.

Justification

It needs to be stated explicitly that all forms of discrimination are prohibited in the application of the Directive.

Amendment 4
Recital 13

(13) In the interests of a correct recognition of those persons in need of protection as

(13) In the interests of a correct recognition of those persons in need of protection as

refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and **sufficient** procedural guarantees to pursue his/her case at and throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should **normally** provide an applicant at least with a right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can **reasonably be supposed to** understand.

refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and procedural guarantees to pursue his/her case at and throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should provide an applicant at least with a right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can understand.

Justification

In ensuring a fair process, asylum applicants should be informed in a language they can understand.

Amendment 5 Recital 14

(14) In addition, specific procedural guarantees for unaccompanied minors should be laid down, because of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.

(14) In addition, specific procedural guarantees for unaccompanied minors should be laid down, because of their vulnerability. In this context, the best interests of the child should be the primary consideration of Member States **throughout the whole asylum procedure, consistent with Article 3 of the UN Convention on the Rights of the Child (CRC).**

Justification

This Directive should be kept in consistent with the Convention of the Rights of the Child (CRC).

Amendment 6
Recital 17 a (new)

(17a) Acknowledging the existence of trafficking in human beings and having regard to the best interests of the asylum applicant, he/she must not be discriminated against in any way in his/her application for having entered the Member State in such a manner.

Justification

Trafficking is one of the main avenues for applicants to reach Member State borders by. However, the applicant should not be penalised for having used the only resource he could to flee from persecution.

Amendment 7
Recital 19

(19) Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the ***minimum*** common list of safe countries of origin to be adopted pursuant to this Directive, Member States ***should be obliged to*** consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list, ***after consultation of the European Parliament.***

(19) Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the common list of safe countries of origin to be adopted pursuant to this Directive, Member States ***may*** consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list ***pursuant to Article 251 of the Treaty.***

Justification

In accordance with Article 251 of the EC Treaty, the Parliament shall have co-decision powers in the area of asylum. Your draftsman believes the common list should be harmonised and apply in general to all Member States. She believes that while Members may draw up more stringent procedures, the common list should be the maximum and not the minimum standard.

Amendment 8
Recital 20

(20) It results from the status of Bulgaria and Romania as candidate countries for the accession to the European Union and the progress made by these countries for membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union. ***deleted***

Justification

Both countries have been the subject of criticism in the Commission's annual Country Reports, concerning their human rights situations. Additionally, civil society organisations have well-documented cases of human rights abuses within both states.

Amendment 9
Recital 21

(21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no

(21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country, ***including adherence to the rules of international law on human rights, fundamental freedoms and refugee protection***, and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe

longer be considered relevant for him/her.

in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

Justification

Adherence to the rules laid down in international law on human rights, fundamental freedoms and refugee protection should be included among the basic criteria used in assessing whether to designate a third country as a safe country (see Annex II of the Directive).

Amendment 10

Recital 22

(22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, except where this Directive provides otherwise, in particular where ***it can be reasonably assumed*** that another country would do the examination or provide sufficient protection. Especially, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

(22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, except where this Directive provides otherwise, in particular where ***they are satisfied*** that another country ***which is regarded as safe*** would do the examination or provide sufficient protection. Especially, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

Justification

Member States should satisfy themselves that another country which is regarded as safe will examine the asylum application or will provide sufficient protection before taking a decision not to examine an application on the substance. The wording proposed by the Council leaves too much room for uncertainty.

Amendment 11

Recital 23

(23) Member States should also not be obliged to assess the substance of an asylum application where the applicant, due to a connection to a third country as defined by

(23) Member States should also not be obliged to assess the substance of an asylum application where ***they are satisfied that*** the applicant, due to a connection to a third

national law, ***can reasonably be expected to seek*** protection in that third country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In the interest of avoiding secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

country as defined by national law, ***is seeking*** protection in that third country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In the interest of avoiding secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

Justification

Member States should satisfy themselves that another country which is regarded as safe will examine the asylum application or will provide sufficient protection before taking a decision not to examine an application on the substance. The wording proposed by the Council leaves too much room for uncertainty.

Amendment 12 Recital 24

(24) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, ***Member States should be allowed to carry out no or no full examination of asylum applications regarding applicants who enter their territory from such European third countries. Given*** the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter ***after consultation of the European Parliament.***

(24) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, ***given*** the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter ***pursuant to Article 251 of the Treaty.***

Justification

In accordance with the principle of non-refoulement, applicants should have a "meaningful link" with any third country, via family or a broader community, and not as may be the case, simply having transited through the state.

Following the agreements of Tampere and the implementation of the Hague programme, the introduction of codecision is foreseen for the European Parliament in the field of asylum and migration policies.

Amendment 13
Recital 24 a (new)

(24a) With respect to European third countries, it must be taken into account that concerns regarding human rights and refugee protection, in particular with regard to the Roma and other ethnic minorities, are well documented, as are instances of claimants having to flee a European third country after initially claiming asylum in it, due to human rights abuses against the claimant resulting from negative changes to the state's internal stability. Persons claiming asylum after travelling through such states or after initially claiming asylum in such states cannot be denied the right to have their asylum applications processed within Member States in accordance with international law.

Justification

Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection granted (OJ L 304/12 of 30.9.2004).

Amendment 14
Recital 25

(25) It follows from the nature of the common standards concerning **both** safe third country **concepts** as set out in this Directive, that the practical effect of the **concepts** depends on whether the third country in question permits the applicant in question to enter its territory.

(25) It follows from the nature of the common standards concerning **the** safe third country **concept** as set out in this Directive that the practical effect of the **concept** depends on whether the third country in question permits the applicant in question to enter its territory.

Justification

See Amendment to Article 35A.

Amendment 15
Article 1

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status ***which are in line with the Geneva Convention and with Directive 2004/83/EC.***

Justification

Directive shall be in accordance with international asylum law.

Amendment 16
Article 2, point (h)

(h) "Unaccompanied ***minor***" means a person below the age of eighteen who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;

(h) "Unaccompanied ***child***" or "***separated child***" means a person below the age of eighteen who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;
"unaccompanied child" refers to a child who has been separated from both parents and other relatives or legal or customary guardians; "separated child" refers to a child who is accompanied by an adult who is unwilling or unable to assume responsibility for long-term care of the child.

For the purpose of this Directive, the term "unaccompanied minor" covers both "unaccompanied children" and "separated children";

Justification

Keeping in line with terminology used on the international level in human rights and refugee laws.

Amendment 17
Article 3, paragraph 1 a (new)

1a. This Directive shall be applied without discrimination of any form in accordance with Article 13 of the Treaty and international conventions on human rights and refugee protection.

Justification

In applying the Directive, Member States must take account of the principle of non-discrimination as laid down in Article 13 of the EC Treaty and in international conventions on human rights and refugee protection.

Amendment 18
Article 3A, paragraph 1, subparagraph 1

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with the provisions of this Directive, in particular Articles 7(2) **and** 8.

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with the provisions of this Directive, in particular Articles 7(2), 8 **and 10(1)**.

Justification

Right to a personal interview is an essential right in the asylum process which must be safeguarded.

Amendment 19
Article 3A, paragraph 3

3. Member States shall ensure that where authorities are designated in accordance with paragraph 2, the personnel of such authorities have the appropriate knowledge **or receive the necessary** training to fulfil their obligations when implementing this Directive.

3. Member States shall ensure that where authorities are designated in accordance with paragraph 2, the personnel of such authorities have the appropriate knowledge **and** training to fulfil their obligations when implementing this Directive.

Justification

Personnel must be given appropriate training to ensure knowledge of the sensitive and delicate nature of their work.

Amendment 20
Article 5, paragraph 3 a (new)

3a. In cases in which dependent adults consent to the lodging of the application on their behalf, consistent with Article 3 of the Convention on the Rights of the Child (CRC), the application of the best interest of the child principle shall be adhered to throughout the whole asylum procedure.

Justification

Ensuring accordance with the Convention of the Rights of the Child.

Amendment 21
Article 5, paragraph 4, introductory part

4. Member States may determine, in national legislation

4. Member States may determine, ***provided they act in accordance with Article 3 of the Convention on the Rights of the Child (CRC)***, in national legislation

Justification

Article 3 of the Convention of the Rights of the Child (CRC), and ECHR.

Amendment 22
Article 6, paragraph 1

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until such time as the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until such time as the determining authority has made a ***final*** decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.

Justification

In several Member States, 30-60% of initial negative decisions are subsequently overturned on appeal.

Regarding final phrase: concerns this does not allow Member States to grant residence permits at all, thus in excess of EC's competence to establish only minimum standards in the field.

Amendment 23
Article 7, paragraph 1

1. Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the **sole ground** that they have not been made as soon as possible.

1. Without prejudice to Article 23 (4) (i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the **grounds** that they have not been made as soon as possible.

Justification

Concerns that late applications will not be judged on the merit of their content, but on the fact of late submission. Further, in Jabari v. Turkey (ECHR) and UNCAT Committee, late submission is not inconsistent where genuine risk of persecution exists.

Amendment 24
Article 7, paragraph 2, point (a)

(a) applications are examined and decisions are taken individually, objectively and impartially;

(a) applications are examined and decisions are taken individually, objectively and impartially **in accordance with this Directive and international human rights and refugee law;**

Justification

Ensuring Directive is in accordance with international law.

Amendment 25
Article 7, paragraph 2, point (b)

(b) precise and up-to-date information is obtained from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum **and, where necessary, in countries through which they have transited**, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(b) precise and up-to-date information is obtained from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR) **and other civil society organisations working in the applicants' countries of origin**, as to the general **civil, legal and political** situation, **particularly with regard to respect for human rights and fundamental freedoms**, prevailing in the countries of origin of applicants for asylum, and that such information is made available to the personnel responsible for examining applications and taking decisions;

Justification

Civil society organisations in the country of origin can provide expertise on the human rights situation within the country.

A safe third country should have be evaluated on an individual basis and the applicant should have a meaningful link to the country via family or a broader community.

Asylum applications must be examined on the basis of information which makes it possible to assess the civil, legal and political situation prevailing in the applicant's country of origin, including respect for human rights and fundamental freedoms. Such information must be obtained in order to allow the relevant authority to act objectively and impartially.

Amendment 26

Article 7, paragraph 2, point (c)

(c) the personnel examining applications and taking the decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

(c) the personnel examining applications and taking the decisions have the knowledge, **training and instructions** with respect to relevant standards applicable in the field of asylum and refugee law.

Justification

To ensure each application is fairly and thoroughly evaluated on its merits, personnel must be properly trained in the area.

Amendment 27

Article 7, paragraph 3

3. The authorities referred to in Chapter V **shall**, through the determining authority **or the applicant or otherwise**, have access to the general information referred to in paragraph 2(b), necessary for the fulfilment of their task.

3. The authorities referred to in Chapter V **must**, through the determining authority, have access to the general information referred to in paragraph 2(b), necessary for the fulfilment of their task.

Justification

Not making it mandatory for appeals authorities to have access to documents referred to in 2(b) undermines the scope of 2(b)'s application. Not clearly stating which party is to provide appeals authorities with the documents lays open the possibility of no party providing the information.

Amendment 28
Article 7, paragraph 4

4. Member States **may** provide for rules concerning the translation of documents relevant for the examination of applications.

4. Member States **must** provide for rules concerning the translation of documents relevant for the examination of applications.

Justification

Translation is a crucial issue in the asylum application process.

Amendment 29
Article 8, paragraph 1

1. Member States shall ensure that decisions on applications for asylum are given in writing.

1. Member States shall ensure that **all** decisions on applications for asylum are given in writing.

Justification

A written record must be available of all decisions taken.

Amendment 30
Article 8, paragraph 2, subparagraph 3

Moreover, Member States **need not** provide information on how to challenge a negative decision in writing in conjunction with that decision **where the applicant has been informed at an earlier stage either in writing or by electronic means accessible to the applicant of how to challenge such a decision.**

Moreover, Member States **must** provide information on how to challenge a negative decision in writing in conjunction with that decision.

Justification

Applicants must be informed of all of their rights in writing at each point when a decision in the application is taken.

Amendment 31
Article 9, paragraph 1, point (b)

(b) they must receive the services of **an** interpreter for submitting their case to the competent authorities whenever necessary. Member States shall **consider it necessary to**

(b) they must receive the services of **a qualified and impartial** interpreter for submitting their case to the competent authorities whenever necessary. Member

give these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles 10 and 11 and appropriate communication cannot be ensured without such services. In **this case** and in other cases where the competent authorities call upon the applicant, the services shall be paid for out of public funds;

States shall **guarantee this service during all personal interviews, appeal hearings and other verbal communications with the competent authorities, in particular** as referred to in Articles 10 and 11 and **when** appropriate communication cannot be ensured without such services. In **these** and in other cases where the competent authorities call upon the applicant, the services shall be paid for out of public funds;

Justification

Translation and interpreting services are fundamental to a fair asylum process.

Amendment 32
Article 9, paragraph 1, point (c)

(c) they must **not be denied** the opportunity to communicate with the UNHCR or with any other organisation working **on behalf of the UNHCR** in the territory of the Member State **pursuant to an agreement with that Member State**;

(c) they must be **given** the opportunity to communicate with the UNHCR or with any other organisation working **with asylum seekers** in the territory of the Member State;

Justification

Article 9 needs to reflect a requisite degree of positive cooperation with the UNHCR and its delegates.

Amendment 33
Article 10, paragraph 1, subparagraph 1

1. Before a decision is taken by the determining authority, the applicant **for asylum shall be given the opportunity of** a personal interview on his/her application for asylum with a person competent **under national law** to conduct such an interview.

1. Before a decision is taken by the determining authority, the applicant shall **have the right to** a personal interview on his/her application for asylum with a person competent **and fully qualified under international law in the field of asylum and refugee matters** to conduct such an interview **and take a decision under international/Community law. The interview should be conducted in an objective way and in total independence.**

Member States shall ensure the creation of a national register of competent persons available to conduct the personal interviews

of asylum applicants in all the Member States. Those listed on the register should be obliged to respect a national or Community code of conduct designed to ensure that interviews of asylum applicants are carried out objectively, impartially and faithfully.

Justification

Right to an interview is central to determining asylum applications as witnessed in the case law of the ECHR, Human Rights Committee and the UNCAT Committee as well as being referred to in the 1995 Council Resolution on Minimum Guarantees for Asylum Procedures. The original format of Article 10 undermines this right.

Amendment 34

Article 10, paragraph 1, subparagraph 2

Member States **may** also give the opportunity of a personal interview to each adult among the dependants referred to in Article 5(3).

Member States **must** also give the opportunity of a personal interview to each adult among the dependants referred to in Article 5(3).

Justification

Right to an interview is central to determining asylum applications as witnessed in the case law of the ECHR, Human Rights Committee and the UNCAT Committee as well as being referred to in the 1995 Council Resolution on Minimum Guarantees for Asylum Procedures. The original format of Article 10 undermines this right.

Amendment 35

Article 10, paragraph 1, subparagraph 3

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview, **taking into account the individual's level of maturity and any psychological trauma he/she has endured. The interviewer shall bear in mind that due to his/her age, the minor's knowledge of conditions in the country of origin may be limited.**

Justification

Right to an interview is central to determining asylum applications as witnessed in the case

law of the ECHR, Human Rights Committee and the UNCAT Committee as well as being referred to in the 1995 Council Resolution on Minimum Guarantees for Asylum Procedures. The original format of Article 10 undermines this right.

Amendment 36
Article 10, paragraph 2, point (b)

(b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with filling his/her application and submitting the essential information regarding the application, in terms of Article 4(2) of Council Directive 2004/83/EC; or

(b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with filling his /her application and submitting the essential information regarding the application, in terms of Article 4(2) of Council Directive 2004/83/EC, **and the applicant has confirmed in writing at his/her meeting with the competent authority that he/she believes he/she has had sufficient opportunity at that meeting to present his/her case;** or

Justification

To ensure fairness of procedures and accuracy of decisions, it should be left to the applicant to determine if they believe they have had sufficient opportunity to present their case.

Amendment 37
Article 10, paragraph 2, point (c)

(c) the determining authority, on the basis of a complete examination of information provided by the applicant, considers the application as unfounded in the cases where the circumstances mentioned in Article 23(4)(a), (c), (g), (h) and (j) apply.

deleted

Justification

Personal testimony is often decisive for determinations, and can be vital to clarify errors or apparent inconsistencies. Limiting interview rights will significantly undermine the fairness of procedures and accuracy of decisions.

(see UNHCR Summary) Further, strong concerns that Article 23 (4) (j) is can merely be based on a subjective opinion.

(Your Draftswoman is concerned this is more to limit the burden on administrative and labour costs for Member States than about ensuring applicant receives all possible opportunity to rightfully receive asylum).

Amendment 38
Article 10, paragraph 3

3. The personal interview may also be omitted, *where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt*, Member States *may* require a medical or psychological certificate.

Where the Member State does not provide the opportunity for a personal interview pursuant to this paragraph, or where applicable, to the dependant, reasonable efforts must be made to allow the applicant or the dependant to submit further information.

3. The personal interview may also be omitted *or terminated* where the *interviewer believes an applicant may have a mental or emotional disturbance which impedes a normal examination of his/her case. In such instances, medical advice concerning the applicant's health must be sought from a medical practitioner and* Member States *shall, when in doubt*, require a medical or psychological certificate.

Justification

All reasonable measures must be taken to conduct an interview. The second part of this Article severely undermines the fairness of procedures and the accuracy of decisions.

Amendment 39
Article 10, paragraph 3 a (new)

3a. Member States shall ensure that an applicant who cannot attend or complete a personal interview owing to his/her state of medical and/or psychological health, physical or mental disability, or particular emotional disturbance, is given specific attention in order to safeguard the fairness of the proceedings.

Justification

This is to strengthen the weak safeguard in the original Article 10 (3).

Amendment 40
Article 10, paragraph 4

4. The absence of a personal interview in

4. The absence of a personal interview in

accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum.

accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum ***if the absence is for reasons connected with Articles 2(b) and (c), 10(3), 20(1), 23(4)(a), (c), (g), (h), and (j), and paragraph 3 of this Article.***

Justification

To ensure principle of non-refoulement is met.

Amendment 41
Article 10, paragraph 5

5. The absence of a personal interview ***pursuant to paragraph 2(b) and (c) and paragraph 3*** shall not ***adversely affect*** the decision of the determining authority.

5. The absence of a personal interview shall not ***negatively impact on*** the decision of the determining authority. ***In such cases, each person must be given the opportunity to be represented, by a guardian or a legal representative in the case of minors, or a counsellor or legal adviser as appropriate.***

Justification

Ensuring the rights of minors and other dependants are met.

Amendment 42
Article 10, paragraph 6

6. Irrespective of Article 20 (1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.

6. Irrespective of Article 20 (1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear, ***or the interview failed to materialise or was terminated due to the applicant's psychological and/or medical state.***

Justification

To ensure safeguards in Article 20 are not overridden.

Amendment 43
Article 10, paragraph 6 a (new)

6a. If, in deciding on the application for asylum, the Member State takes into account the applicant's failure to appear for the interview, as determined in paragraph 6, the Member State must show that all possible means were used to inform the individual of the right to a personal interview. Failure to do so shall, if not remedied, invalidate any subsequent negative action taken.

Justification

To ensure applicant's rights are not withdrawn due to any administrative failures.

Amendment 44
Article 11, paragraph 3, point (a)

(a) ensure that the person who conducts the interview is **sufficiently** competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so, and

(a) ensure that the person who conducts the interview is competent **and has received the appropriate training** to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so, and

Justification

"sufficient" appears to indicate lower degree of competence is acceptable. As well, given the sensitive nature of many claimants' experiences, appropriate training for the interviewer is required to handle these special needs of applicants.

Amendment 45
Article 11, paragraph 3, point (b)

(b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she **may**

(b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she **is able** to

reasonably be supposed to understand and
in which he/she is able to communicate in.

understand and communicate in.

Justification

Applicant's vulnerability in his/her surroundings must be taken into account, and to ensure accuracy of the applicant's account, the language must be clearly one he/she can understand.

Amendment 46
Article 11, paragraph 4

4. Member States *may* provide for rules concerning the presence of third parties at the personal interview.

4. Member States *shall* provide for rules concerning the presence of third parties at the personal interview, *provided such rules are in accordance with international standards.*

Justification

See that it is In line with the Committee of the Rights of the Child.

Amendment 47
Article 12, paragraph 3, subparagraph 1

3. Member states *may request the applicant's approval on* the contents of the report of the personal interview.

3. Member States *must have the applicant verify* the contents of the report of the personal interview, *in order to avoid misunderstandings or contradictions or invalidation of the application at a later date.*

Justification

Not having the need for the applicant to comment on the accuracy or completeness of the report leaves interview accounts open to misinterpretation, manipulation and distortion. "Verify" is a more accurate description of the applicant's role at this stage.

Amendment 48
Article 12, paragraph 3, subparagraph 2

Where an applicant refuses to *approve* the contents of the report, the reasons for this refusal shall be entered into the applicant's file.

Where an applicant refuses to *verify* the contents of the report, the reasons for this refusal shall be entered into the applicant's file.

Justification

Not having the need for the applicant to comment on the accuracy or completeness of the report leaves interview accounts open to misinterpretation, manipulation and distortion. "Verify" is a more accurate description of the applicant's role at this stage.

Amendment 49

Article 12, paragraph 3, subparagraph 3

The refusal of an applicant to **approve** the contents of the report of the personal interview shall not prevent the determining authority from taking a decision on his/her application.

The refusal of an applicant to **verify** the contents of the report of the personal interview shall not prevent the determining authority from taking a decision on his/her application; **but the applicant's refusal to verify the contents will be taken into account when considering the contents of the report.**

Justification

Not having the need for the applicant to comment on the accuracy or completeness of the report leaves interview accounts open to misinterpretation, manipulation and distortion. "Verify" is a more accurate description of the applicant's role at this stage.

Amendment 50

Article 13, paragraph 1

1. Member States shall allow applicants for asylum at their own cost the opportunity to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

1. Member States shall allow applicants for asylum, **from the first moment of contact with the determining authorities**, at their own cost the opportunity to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

Justification

Many errors arise at the beginning of the asylum procedure, where claimants misunderstand procedures and processes.

Amendment 51

Article 13, paragraph 3

3. Member States may provide in their

3. Member States may provide in their

national legislation that free legal assistance and/or representation be granted:

(a) only for the procedures before a court or tribunal in accordance with Chapter V and not to any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or

(b) only to those who lack sufficient resources; and/or

(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; **and/or**

(d) only if the appeal or review is likely to succeed.

Member States shall ensure that legal assistance and/or representation granted under subparagraph (d) is not arbitrarily restricted.

national legislation that free legal assistance and/or representation be granted:

(a) only for the procedures before a court or tribunal in accordance with Chapter V and not to any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or

(b) only to those who lack sufficient resources; and/or

(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum.

Justification

Erodes Article 13(2), which is an essential safeguard in the asylum process.

Amendment 52

Article 13, paragraph 5, point (a)

(a) ***impose monetary and/or time limits on the provision of free legal assistance and/or representation*** provided that such limits do not arbitrarily restrict access to legal assistance and/or representation.

(a) ***limit the amount of legal assistance to the average costs of legal assistance for each relevant step in the asylum procedure*** provided that such limits do not arbitrarily restrict access to legal assistance and/or representation.

Justification

More specific to prevent the right to access to legal assistance from being taken away.

Amendment 53

Article 14, paragraph 1, subparagraph 1

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law who assists or represents an applicant for asylum

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law who assists or represents an applicant for asylum

under the terms of national law shall enjoy access to such information in the applicant's file *as is liable to be examined by the authorities referred to in Chapter V, insofar as the information is relevant to the examination of the application.*

under the terms of national law shall enjoy access to information in the applicant's file.

Justification

Access to the file is the only way to ensure that the general information relied on by authorities is up-to-date accurate and relevant to the applicant's case.

Amendment 54

Article 14, paragraph 1, subparagraph 2

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, access to the information or sources in question must be available to the authorities referred to in Chapter V, except where such access is precluded in national security cases.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, access to the information or sources in question must be available to the authorities referred to in Chapter V, except where such access is precluded in ***clearly defined*** national security cases.

Justification

Failure to disclose information will amount to a violation of Article 13 ECHR in cases where Article 3 ECHR is applicable.

Amendment 55

Article 15, paragraph 2, point (c)

(c) is married or has been married.

deleted

Justification

An unaccompanied minor should not lose any rights given to him/her under this category by virtue of his/her marital status.

Amendment 56
Article 15, paragraph 5, point (a)

(a) unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, about the possibility of age determination by a medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination.

(Does not affect the English version).

Justification

This amendment has no effect on the English version.

Amendment 57
Article 17, paragraph 1

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum. ***Permissible exceptions may only be resorted to, where necessary, in order:***

(a) to verify identity;

(b) to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum;

(c) to protect national security or public order.

Justification

UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, which outline permissible exceptions to the general rule that detention of asylum-seekers should be avoided and used only as a last resort. Further, as outlined in Amuur v. France by the ECHR, grounds for detention must be clearly outlined.

Amendment 58
Article 17, paragraph 2

2. Where an applicant for asylum is held in detention, Member States shall ensure that there is the possibility of speedy judicial review.

2. Where an applicant for asylum is held in detention ***for reasons unrelated to his/her asylum application***, Member States shall ensure that:

(a) there is the possibility of speedy judicial review;

(b) *the applicant has access to legal, medical and social assistance;*

(c) *the applicant is informed promptly about the grounds of the detention in a language he/she understands;*

(d) *the applicant has the right to visits by legal representatives and by representatives from the UNHCR and other organisations specifically working with asylum applicants.*

Justification

This amendment is to ensure there is no violation of Article 31 of the 1951 Convention and to ensure compatibility with ECHR and ICCPR requirements of 'legality' for deprivations of liberty. Subparagraph (b), see Amuur v. France 0019776/92, 1996-III, No 11, 25 June 1996. Subparagraph (c) refers to Article 5(2) of the ECHR: 'Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him'.

Subparagraph (d) refers to the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers.

To ensure there is no violation of Article 31 of 1951 Convention and is compatible with ECHR and ICCPR requirements of "legality" for deprivations of liberty.

Amendment 59
Article 20, paragraph 2, subparagraph 2

Member States may provide for a time limit after which the applicant's case can no longer be reopened. ***deleted***

Justification

Time limits are incompatible with non-refoulement, 1951 Convention.

Amendment 60
Article 21, paragraph 1, introductory part

1. Member States **shall** allow the UNHCR : 1. Member States **are obliged to** allow the UNHCR:

Justification

In line with Article 35 of the 1951 Convention.

Amendment 61
Article 22, point (a)

- (a) **directly** disclose the information regarding individual applications for asylum, or the fact that an application has been made, to the alleged actor(s) of persecution of the applicant for asylum. (a) disclose the information regarding individual applications for asylum, or the fact that an application has been made, to the alleged actor(s) of persecution of the applicant for asylum.

Justification

"directly" is open to discrepancy and risks compromising efficacy as a safeguard.

Amendment 62
Article 23, paragraph 4, point (a)

- (a) the applicant in submitting his/her application and presenting the fact, has only raised issues that are not relevant **or of minimal relevance** to the examination of whether he/she qualifies as a refugee by virtue of Council Directive 2004/83/EC; or (a) the applicant in submitting his/her application and presenting the fact, has only raised issues that are not relevant to the examination of whether he/she qualifies as a refugee by virtue of Council Directive 2004/83 EC; or

Justification

The terminology "minimal relevance" does not grant legal security to the applicant because it is too vague and puts the principle of non-refoulement at risk.

Amendment 63
Article 23, paragraph 4, point (d)

- (d) the applicant has misled the authorities by presenting false **information or** documents **or by withholding relevant** (d) the applicant has misled the authorities by presenting false documents with respect

information or documents with respect to his/her identity and/or nationality **that could have had a negative impact on the decision;**
or

to his/her identity and/or nationality; or

Justification

Terminology "false information" is too subjective.

Amendment 64
Article 23, paragraph 4 a (new)

4a. Member States may provide for derogations from the application of paragraph 4 for humanitarian reasons, particularly in situations involving trafficking in human beings, for political reasons or for reasons of public international law.

Justification

Member States should lay down exceptions from the application of paragraph 4 which provide for asylum applications to be subject to a priority or accelerated examination procedure, particularly for humanitarian or political reasons or for reasons of public international law. The same provisions are also contained in Article 35a(4) of the Directive.

Amendment 65
Article 25, paragraph 2, point (d)

(d) the applicant is allowed to remain in the Member State concerned on some other ground and as result of this he/she has been granted a status equivalent to the rights and benefits of **the refugee status by virtue of Council Directive 2004/83/EC;**

(d) the applicant is allowed to remain in the Member State concerned on some other ground and as result of this he/she has been granted a status equivalent to the rights and benefits of **nationals in accordance with Article 1(E) of the Geneva Convention;**

Justification

Must be as broad as the 1951 Convention, Article 1E. Also, the Council Directive 2004/83/EC does not incorporate all Convention rights as listed in Article 1E.

Amendment 66
Article 25, paragraph 2, point (e)

(e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of a status pursuant to (d); ***deleted***

(This amendment falls if amendment 65 is rejected.)

Justification

If amendment 65 is not accepted, than Article 25 (2e) will not be running counter to the 1951 Convention.

Amendment 67
Article 25, paragraph 2, point (g)

(g) a dependant of the applicant lodges an application, after he/she has in accordance with Article 5 (3), consented to have his/her case be part of an application made on his/her behalf and there are no facts relating to the dependant's situation justifying a separate application. ***deleted***

Justification

An applicant who is a dependent shall not be penalised for a delayed individual application as personal trauma may have delayed an individual application or the guardian in question relinquishes his/her responsibilities. Each claimant shall have his/her right to have their asylum request analysed on individual grounds.

Amendment 68
Article 27, paragraph 1, point (a)

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; and ***deleted***

Justification

Justification: not necessary as reference to the Geneva Convention in Article 27, paragraph 1a new will cover this point.

Amendment 69

Article 27, paragraph 2, point (a)

(a) rules requiring a **connection** between the person seeking asylum and the third country concerned based on which it would be reasonable for that person to go to that country;

(a) rules requiring a **meaningful link** between the person seeking asylum and the third country concerned based on which it would reasonable for that person to go to that country;

Justification

A “connection” could be conduced to mean the applicant passed the country in transit. Yet, in order to be transferred to the third country, the applicant must have a “meaningful” link with the country in question via family, a broader community, etc.

Amendment 70

Article 27, paragraph 2, point (c)

(c) rules, in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant **which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.**

(c) rules, in accordance with international law **and, specifically, the Geneva Convention**, allowing an individual examination of whether the third country concerned is safe for a particular applicant.

Justification

Reference to international law and the 1951 Convention will suffice.

Amendment 71

Article 27, paragraph 4

4. Where the third country does not permit the applicant for asylum in question to enter its territory, Member States shall ensure that access to **a** procedure is given in accordance

4. Where the third country does not permit the applicant for asylum in question to enter its territory, Member States shall ensure that access to **an asylum** procedure is given in

with the basic principles and guarantees described in Chapter II.

accordance with the basic principles and guarantees described in Chapter II.

Justification

Access to asylum procedure must be specified to ensure applicants' right to asylum is safeguarded.

Amendment 72
Article 29, paragraph 2

2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application, if it is so defined in the national legislation, as manifestly unfounded.

deleted

Justification

Undermines Article 29, paragraph 1.

Amendment 73
Article 30, paragraph 1

1. The Council shall, acting by a qualified majority on a proposal from the Commission and ***after consultation of the European Parliament***, adopt a ***minimum*** common list of third countries ***that shall be regarded by Member States as safe countries of origin in accordance with Annex II.***

1. The Council shall, acting by a qualified majority on a proposal from the Commission and ***in accordance with Article 251 of the Treaty***, adopt a common list of third countries.

Justification

Following the agreements of Tampere and the implementation of the Hague programme, the introduction of codecision is foreseen for the European Parliament in the field of asylum and migration policies.

Amendment 74
Article 30, paragraph 2

2. The Council may, acting by a qualified

2. The Council may, acting by a qualified

majority on a proposal from the Commission and **after consultation of the European Parliament**, amend the **minimum** common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council or by a Member State that it submit a proposal to amend the **minimum** common list.

majority on a proposal from the Commission and **in accordance with Article 251 of the Treaty**, amend the common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council, **by the European Parliament** or by a Member State that it submit a proposal to amend the common list.

Justification

Article 67(5) of the EC outlines that further measures must be adopted under co-decision. And in accordance with Article 251 of the EC Treaty.

Amendment 75 Article 30, paragraph 3

3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, **where necessary**, information from UNHCR, the Council of Europe and other relevant international organisations.

3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and information from UNHCR, the Council of Europe and other relevant international organisations.

Justification

Given the ever-changing human rights situations in third countries, Member States should make use of all relevant information, as organisations such as UNHCR. have more up-to-date information available given their expertise in the field. Not making use of such data could be detrimental to the applicant's safety in line with the 1951 Convention.

Amendment 76 Article 30, paragraph 4

4. Where the Council requests the Commission to submit a proposal for removing a third country from the **minimum** common list, the **obligation** of Member States pursuant to Article 30B(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

4. Where the Council requests the Commission to submit, **pursuant to Article 251 of the Treaty**, a proposal for removing a third country from the common list, the **right** of Member States pursuant to Article 30B(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

Justification

Following the agreements of Tampere and the implementation of the Hague programme, the introduction of codecision is foreseen for the European Parliament in the field of asylum and migration policies.

Amendment 77

Article 30, paragraph 5

5. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the **minimum** common list, that Member State shall notify the Council in writing of the request made to the Commission. The **obligation** of this Member State pursuant to Article 30B(2) shall be suspended with regard to the third country as of the day following the notification of the request to the Council.

5. Where a Member State **or the European Parliament** requests the Commission to submit a proposal to the Council for removing a third country from the common list, that Member State shall notify the Council in writing of the request made to the Commission. The **right** of this Member State pursuant to Article 30B(2) shall be suspended with regard to the third country as of the day following the notification of the request to the Council.

Justification

See justification for Article 30, paragraph 4.

Amendment 78

Article 30, paragraph 7

7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal, before the end of this period, to withdraw the third country from the **minimum** common list. The suspensions shall end in any case where the Council **rejects**, a proposal by the Commission to withdraw the third country from the list.

7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal, before the end of this period, to withdraw the third country from the common list. The suspensions shall end in any case where the Council **and the European Parliament reject** a proposal by the Commission to withdraw the third country from the list.

Justification

See justification for Article 30, paragraph 4.

Amendment 79

Article 30, paragraph 8

8. Upon request by the Council, the Commission shall report to the Council and

8. Upon request by the Council **and the European Parliament**, the Commission

the European Parliament on whether the situation of a country on the *minimum* common list is still in conformity with Annex II. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.

shall report to the Council and the European Parliament on whether the situation of a country on the common list is still in conformity with Annex II. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.

Justification

See justification for Article 30, paragraph 4.

Amendment 80

Article 30A, paragraph 2, introductory part

2. By derogation to paragraph 1, Member States may retain legislation in force at the time of adoption of this Directive that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are *generally* neither subject to:

2. By derogation to paragraph 1, Member States may retain legislation in force at the time of adoption of this Directive that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are neither subject to:

Justification

For a Member State to designate a third country as a safe country of origin it is absolutely essential for it to ensure that the third country concerned does not engage in persecution or torture or carry out inhuman or degrading treatment or punishment.

Amendment 81

Article 30A, paragraph 4

4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.

4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, *respect for human rights and fundamental freedoms*, the application of the law and the general political circumstances in the third country concerned.

Justification

Adherence to the rules laid down in international law on human rights, fundamental freedoms and refugee protection should be included among the basic criteria used in assessing whether to designate a third country as a safe country (see Annex II of the Directive).

Amendment 82

Article 30B, paragraph 1, final part

and he/she has not submitted any **serious** grounds for considering the country not to be a safe country of origin in his/her particular circumstances in terms of his/her qualification as a refugee in accordance with Council Directive 2004/83/EC.

and he/she has not submitted any grounds for considering the country not to be a safe country of origin in his/her particular circumstances in terms of his/her qualification as a refugee in accordance with Council Directive 2004/83/EC.

Justification

Original terminology is too subjective.

Amendment 83

Article 30B, paragraph 2

2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe **pursuant to Article 30**.

2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe **for the particular applicant**.

Justification

Safety of third countries should be determined on an individual basis.

Amendment 84

Article 30B, paragraph 3

3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept, **in line with international law, and will duly notify the Commission of any further rules and modalities**.

Justification

International law must be respected, and the Commission must be kept up-to-date of any national developments.

Amendment 85
Article 33, paragraph 1

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State *may* examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State *shall* examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

Justification

Given the need for flexibility in dealing with submissions by asylum applicants, in particular the cases of victims of trauma and torture, Member States should be obligated to examine all further representations, in line with ECHR and UNCAT case law.

Amendment 86
Article 33, paragraph 2, introductory part

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum, ***provided the initial application is not currently open to appeal.***

Justification

Stopping the application while it is still open to appeal runs contrary to applicants' rights as outlined in 1951 Convention and international law, in particular the principle of non-refoulement.

Amendment 87
Article 33A

Article 33A

deleted

Member States may retain or adopt the procedure provided for in Article 33 in the case of an application for asylum filed at a

later date by an applicant who, either intentionally or owing to gross negligence, fails to go to a reception centre or to appear before the competent authorities at a specified time.

Justification

Article is unrelated to the merits of the asylum claim, and is thus no more than a punitive measure.

Amendment 88
Article 34, paragraph 2, point (b)

(b) require submission of the new information by the applicant concerned within a time limit after which it has been obtained by him or her;

(b) require submission of the new information by the applicant concerned within a ***specified*** time limit after which it has been obtained by him or her,

Justification

Time limits must be clearly outlined, so to ensure the applicant is given due consideration.

Amendment 89
Article 35, paragraph 3, indent 3

- have access, ***if necessary***, to the services of an interpreter, as described in Article 9 (1) (b); and

- have access to the services of an interpreter, as described in Article 9 (1) (b); and

Justification

Right to an interpreter and right to legal advisor are inherent rights, in accordance with 1951 Convention.

Amendment 90
Article 35, paragraph 3, indent 5

- ***can consult*** a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 13 (1); and

- ***are given access to*** a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 13 (1); and

Justification

Right to an interpreter and right to legal advisor are inherent rights, in accordance with 1951 Convention.

Amendment 91
Article 35, paragraph 5

5. In the event of particular types of arrivals or arrivals involving a large number of third country nationals or stateless persons lodging applications for asylum at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1 or the specific procedure set out in paragraphs 2 and 3, those procedures may also be applied where **and for as long as these third country nationals or stateless persons** are accommodated normally at locations in proximity to the border or transit zone.

5. In the event of particular types of arrivals or arrivals involving a large number of third country nationals or stateless persons lodging applications for asylum at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1 or the specific procedure set out in paragraphs 2 and 3, those procedures may also be applied where **these non-nationals** are accommodated normally at locations in proximity to the border or transit zone.

Justification

"Non-nationals" in line with Geneva Convention terminology. Implementing an open-end time frame for border applicants defies the principle of equal treatment embedded in international law regardless of the circumstances in which they reached the state.

Such provisions also encourage incentives to enter countries illegally and discourage prompt application, rather than claiming asylum at the border.

Amendment 92
Article 36

Member States **shall ensure that an examination may be started** to withdraw the refugee status of a particular person **when new elements or findings arise indicating that there are reasons to reconsider the validity of his/her refugee status.**

Member States **may begin** to withdraw the refugee status of a particular person **if:**

Justification

Initial Article was too vague and open to misuse. It has been redrafted to ensure conformity with 1951 Convention.

Amendment 93
Article 36, point (a) (new)

(a) the applicant has voluntarily re-availed himself/herself of the protection of the

country of his/her nationality; or

Justification

Follows Amendment to Article 36.

Amendment 94
Article 36, point (b) (new)

(b) having once lost it, the applicant has voluntarily reacquired his/her nationality; or

Justification

Follows Amendment to Article 36.

Amendment 95
Article 36, point (c) (new)

(c) the applicant has acquired a new nationality, and enjoys the protection of the country of the new nationality; or

Justification

Follows Amendment to Article 36.

Amendment 96
Article 36, point (d) (new)

(d) the applicant has voluntarily re-established residence in the country to which he/she would at one time not return because of fear of persecution.

Justification

Follows Amendment to Article 36.

Amendment 97
Article 37, paragraph 4

4. By derogation to paragraphs 1, 2 and 3, Member States may decide that the refugee status lapses by law in case of cessation in *deleted*

accordance with Article 11(1), subparagraphs (a), (b), (c) and (d) of Council Directive 2004/83/EC or if the refugee has unequivocally renounced his/her recognition as a refugee.

Justification

Applicants' rights unprotected as no procedural guarantees must be respected in the original text.

Amendment 98

Article 38, paragraph 3, introductory part

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations *dealing with*:

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations ***and the principle of non-refoulement ensuring that applicants may remain in the Member State pending the outcome of an appeal, regarding:***

Justification

The principle of effective remedy is a general principle of international law and is embodied in EC Law (e.g. C-222/84), In Article 47 of the Charter of Fundamental Rights of the European Union and in Article 13 of the European Convention on Human Rights. As held by the European Court of Human Rights, it implies the right to remain in the territory of a Member State until a final decision on the application has been taken.

Amendment 99

Article 38, paragraph 5

5. Where an applicant has been granted a status, which offers the same rights and benefits under national and Community law as the refugee status by virtue of Council Directive 2004/83/EC, the applicant ***may*** be considered to have an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.

5. Where an applicant has been granted a status, which offers the same rights and benefits under national and Community law as the refugee status by virtue of Council Directive 2004/83/EC, the applicant ***shall have a right to*** be considered to have an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.

Justification

For reasons outlined in Article 25(2) (d), refugees have a right in having their refugee status recognised under the 1951 Convention and a right to an effective remedy against rejection, even if they have been granted a status which offers nearly identical rights as refugee rights, in accordance with the Qualification Directive.

Amendment 100 Article 43, paragraph 1

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after the date of its adoption]. ***Concerning Article 13, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [36 months after the date of its adoption].*** They shall forthwith inform the Commission thereof.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after the date of its adoption]. They shall forthwith inform the Commission thereof.

Justification

Article 13 be adopted on equal footing with the rest of the Directive, to ensure non-refoulement is adhered to.

Amendment 101 Annex B to the Annex I, paragraph 1

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Council Directive 2004/83/EC; no torture or inhuman or degrading treatment or punishment; ***and*** no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Council Directive 2004/83/EC; no torture or inhuman or degrading treatment or punishment; no threat by reason of indiscriminate violence in situations of international or internal armed conflict; ***and no evidence of discrimination against individuals on account of race, ethnic background, religion, nationality, membership of a particular social group or political opinion.***

Justification

This is in keeping in line with Article 27, and the 1951 Convention.

Amendment 102

Annex B to the Annex I, paragraph 2, point (d a) (new)

(da) available and up-to-date reports by the UNHCR and other organisations working in the field of human rights and the protection of individual rights.

Justification

If the list of safe countries of origin is to be concise, a clear picture of the country's practice of implementing the relevant laws and regulations is necessary for an accurate assessment.

PROCEDURE

Title	Amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status
References	14203/2004 – C6-0200/2004 – 2000/0238(CNS)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	JURI 1.12.2004
Enhanced cooperation	No
Drafts(wo)man Date appointed	Viktória Mohácsi 3.2.2005
Discussed in committee	20.6.2005
Date amendments adopted	20.6.2005
Result of final vote	for: 18 against: 1 abstentions: 0
Members present for the final vote	Maria Berger, Marek Aleksander Czarnecki, Antonio Di Pietro, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Piiia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Marcin Libicki, Antonio Masip Hidalgo, Viktória Mohácsi, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroz, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina
Substitutes present for the final vote	Evelin Lichtenberger, Marie Panayotopoulos-Cassiotou, Michel Rocard, József Szájer
Substitutes under Rule 178(2) present for the final vote	

PROCEDURE

Title	Amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status				
References	14203/2004 – C6-0200/2004 – 2000/0238(CNS)				
Legal basis	Article 67 EC				
Basis in Rules of Procedure	Rules 51, 41(4) and 55(3)				
Date of Parliament's position	20.9.2001		T5(2001)0472		
Date of Council request for renewed consultation	0.0.0000				
Date of renewed consultation of Parliament	22.11.2004				
Committee responsible Date announced in plenary	1.12.2004				
Committee(s) asked for opinion(s) Date announced in plenary	AFET 1.12.2004	DEVE 14.5.2005	BUDG 1.12.2004	JURI 1.12.2004	FEMM 1.12.2004
Not delivering opinion(s) Date of decision	AFET 19.4.2005	BUDG 23.11.2000	FEMM 25.11.2004		
Enhanced cooperation Date announced in plenary					
Rapporteur(s) Date appointed	Wolfgang Kreissl-Dörfler 10.1.2005				
Previous rapporteur(s)					
Simplified procedure Date of decision					
Legal basis disputed Date of JURI opinion					
Financial endowment amended Date of BUDG opinion					
European Economic and Social Committee consulted Date of decision in plenary					
Committee of the Regions consulted Date of decision in plenary					
Discussed in committee	16.3.2005	24.5.2005	13.6.2005	21.6.2005	
Date adopted	21.6.2005				
Result of final vote	for: 27		against: 20		abstentions: 0
Members present for the final vote	Alexander Nuno Alvaro, Edit Bauer, Johannes Blokland, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Fausto Correia, Agustín Díaz de Mera García Consuegra, Rosa Díez González, Antoine Duquesne, Kinga Gál, Livia Járóka, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Sarah Ludford, Edith Mastenbroek, Jaime Mayor Oreja, Claude Moraes, Hartmut Nassauer, Bogdan Pęk, Martine Roure, Michele				

	Santoro, Inger Segelström, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka
Substitutes present for the final vote	Richard Corbett, Panayiotis Demetriou, Jeanine Hennis-Plasschaert, Sylvia-Yvonne Kaufmann, Jean Lambert, Bill Newton Dunn, Marie-Line Reynaud, Agnes Schierhuber, Kyriacos Triantaphyllides
Substitutes under Rule 178(2) present for the final vote	Richard James Ashworth, Mojca Drčar Murko, Helmuth Markov, Manolis Mavrommatis, Frédérique Ries, John Whittaker
Date tabled – A6	29.6.2005 A6-0222/2005
Comments	...