

AMENDMENTS 001-096

by the Committee on Civil Liberties, Justice and Home Affairs

Report**Sylvie Guillaume****A7-0085/2011**

Minimum standards on procedures for granting and withdrawing international protection (recast)

Proposal for a directive (COM(2009)0554 – C7-0248/2009 – 2009/0165(COD))

Amendment 1**Proposal for a directive****Recital 8***Text proposed by the Commission*

(8) The resources of the European Refugee Fund and of the European Asylum Support Office *should* be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

Amendment

(8) ***It is necessary for*** the resources of the European Refugee Fund and of the European Asylum Support Office ***to*** be mobilised, ***inter alia***, to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation. ***It is also necessary that in Member States that receive a disproportionately large number of asylum applications in relation to the size of their population, financial support and administrative/technical support be mobilised immediately under the European Refugee Fund and the European Asylum Support Office***

respectively in order to enable them to comply with this Directive.

Amendment 2

Proposal for a directive Recital 13

Text proposed by the Commission

(13) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to promote the application of Articles 1, 18, 19, 21, 24 and 47 of the Charter and has to be implemented accordingly.

Amendment

(13) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to promote the application of **Articles** 1, **4**, 18, 19, 21, 24 and 47 of the Charter and has to be implemented accordingly.

Amendment 3

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Member States are obliged to respect fully the principle of non-refoulement and the right to asylum, which includes access to an asylum procedure for any person who wishes to claim asylum and who is in their jurisdiction, including those under the effective control of a Union body or a body of a Member State.

Amendment 4

Proposal for a directive Recital 15

Text proposed by the Commission

(15) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge **or** receives the necessary training in the

Amendment

(15) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge **and** receives the necessary training in the

field of asylum and refugee matters.

Amendment 5

Proposal for a directive Recital 18

Text proposed by the Commission

(18) 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 or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate 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 throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with the 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) and with organizations providing advice or counselling to applicants for international protection, 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 and, in the case of a negative decision, the right to an effective remedy before a court or tribunal.

field of asylum and refugee matters.

Amendment

(18) 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 or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and **effective** procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with the right to stay pending a **final** decision by the determining authority **and, in the case of a negative decision, the time necessary for seeking a judicial remedy, and for so long as a competent court or tribunal so authorises**, 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) and with organizations providing advice or counselling to applicants for international protection, 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 or may** reasonably be supposed to understand and, in the case of a negative decision, the right to an

effective remedy before a court or tribunal.

Amendment 6

Proposal for a directive Recital 19

Text proposed by the Commission

(19) With a view to ensuring an effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular those carrying out surveillance of land or maritime borders or conducting border checks, should receive instructions and necessary training on how to recognise **and deal with** requests for international protection. They should be able to provide third country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and wish to request international protection, with all relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked in land and have their applications examined in accordance with this Directive.

Amendment

(19) With a view to ensuring an effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular those carrying out surveillance of land or maritime borders or conducting border checks, should receive instructions and necessary training on how to recognise, **register and forward to the competent determining authority** requests for international protection. They should be able to provide third country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and wish to request international protection, with all relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked in land and have their applications examined in accordance with this Directive.

Justification

The expression 'deal with requests for international protection' is extremely vague. It should be specified that authorities other than the determining authority are competent only to register applications and forward them to the determining authority for examination.

Amendment 7

Proposal for a directive Recital 20

Text proposed by the Commission

(20) In addition, special procedural guarantees for vulnerable applicants, such

Amendment

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as minors, unaccompanied minors, persons who have been subjected to torture, rape or other serious acts of violence or disabled persons, should be laid down in order to create the conditions necessary for their effective access to procedures and presenting the elements needed to substantiate the application for international protection.

as minors, unaccompanied minors, ***pregnant women***, persons who have been subjected to torture, rape or other serious acts of violence, ***such as violence based on gender and harmful traditional practices***, or disabled persons, should be laid down in order to create the conditions necessary for their effective access to procedures and presenting the elements needed to substantiate the application for international protection.

Amendment 8

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender based persecution. The complexity of gender related claims should be properly taken into account in procedures based on the safe third country concept, the safe country of origin concept or the notion of subsequent applications.

Amendment

(22) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender based persecution ***to an interviewer of the same sex if so requested, who has specific training on the issue of interviews regarding gender-based persecution***. The complexity of gender related claims should be properly taken into account in procedures based on the safe third country concept, the safe country of origin concept or the notion of subsequent applications.

Amendment 9

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) Procedures for examining international protection needs should be organised in a way that makes it possible for the ***competent*** authorities to conduct a rigorous examination of applications for

Amendment

(24) Procedures for examining international protection needs should be organised in a way that makes it possible for the ***determining*** authorities to conduct a rigorous examination of applications for

international protection.

international protection.

Amendment 10

Proposal for a directive Recital 30

Text proposed by the Commission

(30) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive [...]/EC [the Qualification Directive] except where *the present* Directive provides otherwise, in particular where it can be ***reasonably assumed*** that another country would do the examination or provide ***sufficient*** protection. In particular, Member States should not be obliged to assess the substance of an application for international protection 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.

Amendment

(30) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive [...]/EC [the Qualification Directive] except where *this* Directive provides otherwise, in particular where it can be ***ensured*** that another country would do the examination or provide ***effective*** protection. In particular, Member States should not be obliged to assess the substance of an application for international protection where a first country of asylum has granted the applicant refugee status or otherwise ***accessible and effective*** protection and the applicant will be readmitted to this country. ***Member States should proceed in this way only in cases where the applicant in question is safe in the third country concerned.***

Justification

The expression 'sufficient protection' is not clearly defined in the proposal. The protection which an applicant should enjoy if he or she is sent to another country must be effective and, in practice, accessible.

Amendment 11

Proposal for a directive Recital 32

Text proposed by the Commission

(32) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of

Amendment

deleted

***asylum applications regarding applicants
who enter their territory from such
European third countries.***

Justification

The concept of 'safe European third countries' is unacceptable as it stands. This concept is not accompanied by any minimum guarantees or principles since both territorial access and access to the asylum procedure may be refused. Furthermore, recent studies have shown that no Member State currently makes use of this concept in practice.

Amendment 12

**Proposal for a directive
Article 2 – point c**

Text proposed by the Commission

(c) "applicant" or "applicant for international protection" means a third country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

Amendment

Does not affect English version.

Amendment 13

**Proposal for a directive
Article 2 – point d**

Text proposed by the Commission

(d) "applicant with special needs" means an applicant who due to age, gender, disability, mental **health problems** or consequences of torture, rape or other serious forms of psychological, physical or sexual violence is in need of special guarantees in order to benefit from the rights and comply with the obligations in accordance with this Directive;

Amendment

(d) "applicant with special needs" means an applicant who due to age, gender, **sexual orientation, gender identity**, disability, **physical or** mental **illnesses** or consequences of torture, rape or other serious forms of psychological, physical or sexual violence is in need of special guarantees in order to benefit from the rights and comply with the obligations in accordance with this Directive;

Justification

Reference to sexual orientation and gender identity should also be included, to enable the applicants in question to enjoy special guarantees where appropriate.

Amendment 14

Proposal for a directive Article 2 – point p a (new)

Text proposed by the Commission

Amendment

(pa) "family members" means members of the family of the applicant referred to in points (i) to (v) who are present in the same Member State in relation to the application for international protection:

(i) the spouse of the applicant, or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to foreigners;

(ii) the minor children of couples referred to in point (i) above or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;

(iii) the married minor children of couples referred to in point (i) above or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under national law, where it is in their best interests to reside with the applicant;

(iv) the father, mother or guardian of the applicant, when the applicant is a minor and unmarried, or when the applicant is a minor and married, but it is in his/her best interests to reside with his/her father, mother or guardian;

(v) the minor unmarried siblings of the applicant, when the applicant is a minor and unmarried, or when the applicant or his/her siblings are minor and married but it is in the best interests of one or more of them that they reside together.

Justification

"Family members" are not defined in Article 2, 'Definitions', yet the revised text refers to them on several occasions. It is therefore vital to include a definition and, in the interests of harmonisation, to use the definitions contained in the proposals amending the reception and qualification directives and the Dublin regulation. In so doing, however, a change to the definition is needed, since respect for family unity should not depend on whether or not the family existed before the applicant fled the country of origin.

Amendment 15

Proposal for a directive Article 2 – point p b (new)

Text proposed by the Commission

Amendment

***(pb) "new facts and circumstances"
means facts supporting the essence of the
claim, which could contribute to the
revision of an earlier decision.***

Amendment 16

Proposal for a directive Article 4 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

***(aa) applicants with special needs, as
defined in Article 2(d);***

Amendment 17

Proposal for a directive Article 4 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) gender, trauma and age awareness;

(b) gender, ***sexual orientation***, trauma and age awareness, ***with particular attention being paid to unaccompanied minors***;

Amendment 18

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

Amendment

4. Where an authority is designated in

4. Where an authority is designated in

accordance with paragraph 3, Member States shall ensure that the personnel of that authority have the appropriate knowledge **or** receive the necessary training to fulfil their obligations when implementing this Directive.

accordance with paragraph 3, Member States shall ensure that the personnel of that authority have the appropriate knowledge **and** receive the necessary training to fulfil their obligations when implementing this Directive.

Amendment 19

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that a person who wishes to make an application for international protection has an effective opportunity to lodge the application with the competent authority as soon as possible.

Amendment

2. Member States shall ensure that a person who wishes to make an application for international protection has an effective opportunity to lodge the application with the competent authority as soon as possible. ***Where applicants are unable to lodge their application in person, Member States shall ensure that a legal representative is able to lodge the application on their behalf.***

Justification

It is important that legal representatives should be able to lodge an application on behalf of applicants who cannot do so themselves (e.g. for medical reasons).

Amendment 20

Proposal for a directive Article 6 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that a minor has the right to make an application for international protection either on his/her own behalf, or through his/her **parents or other adult family members**.

Amendment

5. Member States shall ensure that a minor has the right to make an application for international protection either on his/her own behalf – ***if he/she is considered under national law as capable of bringing proceedings*** – or through his/her ***legal representative or the latter's authorised representative***. ***In all other cases Article 6(6) shall apply.***

Amendment 21

Proposal for a directive

Article 6 – paragraph 7 – point c

Text proposed by the Commission

Amendment

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

Justification

The unclear wording of this amendment seems at odds with the revised Article 6(7)(c), which allows any minor, whether married or unmarried, to lodge an application for international protection on his/her own behalf, or via his/her parents or other adult family members. There is no reason why married minors should not enjoy this procedural guarantee. Marriage has no bearing on the degree of maturity or independence of a minor.

Amendment 22

Proposal for a directive

Article 6 – paragraph 8 – subparagraph 1

Text proposed by the Commission

Amendment

8. Member States shall ensure that border guards, police and immigration authorities, and personnel of detention facilities have instructions and receive necessary training for ***dealing with*** applications for international protection. If these authorities are designated as competent authorities pursuant to paragraph 1, the instructions shall include an obligation to register the application. In other cases, the instructions shall require to forward the application to the authority competent for this registration together with all relevant information.

8. Member States shall ensure that border guards, police and immigration authorities, and personnel of detention facilities have instructions and receive necessary training for ***recognising, registering and forwarding*** applications for international protection. If these authorities are designated as competent authorities pursuant to paragraph 1, the instructions shall include an obligation to register the application. In other cases, the instructions shall require to forward the application to the authority competent for this registration together with all relevant information.

Justification

The expression ‘dealing with applications for international protection’ could cause confusion and it should be specified that authorities other than the determining authority are competent only to register applications and forward them to the competent determining authority for examination.

Amendment 23

Proposal for a directive

Article 7 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Member States shall ensure that *organizations* providing ***advice and counseling*** to applicants for international protection have access to the border crossing points, including transit zones, and detention facilities ***subject to an agreement with the competent authorities of the Member State.***

Amendment

3. Member States shall ensure that *organisations* providing ***legal assistance and /or representation*** to applicants for international protection have ***swift*** access to the border crossing points, including transit zones, and detention facilities.

Amendment 24

Proposal for a directive

Article 7 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Member States may provide for rules covering the presence of such *organizations* in the areas referred to in this Article.

Amendment

Member States may provide for rules covering the presence of such *organisations* in the areas referred to in this Article, ***as long as they do not limit access by applicants to advice and counselling.***

Amendment 25

Proposal for a directive

Article 8 – paragraph 1

Text proposed by the Commission

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until 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.

Amendment

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a ***final*** decision, ***including in cases where an applicant lodges an appeal, and for as long as a competent court or tribunal so authorises.*** This right to remain shall not constitute an entitlement to a residence permit.

Amendment 26

Proposal for a directive

Article 8 – paragraph 3

Text proposed by the Commission

3. A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where ***the competent authorities are satisfied that*** an extradition decision will not result in direct or indirect refoulement in violation of international obligations of the Member State.

Amendment

3. A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where an extradition decision will not result in direct or indirect refoulement in violation of international obligations of the Member State ***or expose the applicant to inhuman or degrading treatment upon arrival in the third country.***

Justification

Diplomatic assurances have proved insufficient in ensuring the situation on the ground is secure for the applicant. The involvement of the UNHCR and EASO in this process would remedy this situation.

Amendment 27

Proposal for a directive

Article 9 – paragraph 3 – point b

Text proposed by the Commission

(b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR) ***and*** the European Asylum Support Office, as to the general situation prevailing in the countries of origin of applicants 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 and, where the determining authority takes it into consideration for the purpose of taking a decision, to the applicant and his/her legal adviser;

Amendment

(b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), the European Asylum Support Office ***and international human rights organisations,*** as to the general situation prevailing in the countries of origin of applicants 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 and, where the determining authority takes it into consideration for the purpose of taking a decision, to the applicant and his/her legal adviser;

Amendment 28

Proposal for a directive

Article 9 – paragraph 3 – point c

Text proposed by the Commission

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

Amendment

(c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law ***as well as human rights law and have completed the initial and follow-up training programme referred to in Article 4(1);***

Amendment 29

**Proposal for a directive
Article 9 – paragraph 3 – point d**

Text proposed by the Commission

(d) the personnel examining applications and taking decisions are instructed and have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, child ***or*** gender issues.

Amendment

(d) the personnel examining applications and taking decisions are instructed and have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, child, gender, ***religious or sexual orientation*** issues.

Amendment 30

**Proposal for a directive
Article 9 – paragraph 3 – point d a (new)**

Text proposed by the Commission

Amendment

(da) the applicant and his/her legal adviser have access to information provided by the experts referred to in point (d).

Justification

In compliance with the principle of equality of arms and the case law of the Court of Justice, the Commission's recasting proposal stipulates (Article 9(3)(b)) that the applicant and his/her legal adviser should have access to country of origin information. In the interests of consistency and rigour, this should also apply in the case of access by the applicant and his/her legal adviser to information on the opinions of the experts consulted by the determining authority.

Amendment 31

Proposal for a directive
Article 10 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

Amendment

2. Member States shall also ensure that, where an application is rejected ***or granted*** with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are ***clearly*** stated in the decision and information on how to challenge a negative decision is given in writing ***at the time of issuing the decision and signed upon receipt by the recipient.***

Justification

Adding this reference will ensure the applicant will receive the information swiftly therefore enabling him or her to comply with any time requirements for further administrative action.

Amendment 32

Proposal for a directive
Article 10 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant.

Amendment

deleted

Justification

The requirement for applicants to be informed of the possibilities for appealing against a negative decision is a fundamental procedural guarantee which cannot be restricted in this way. Indeed, it is hard to be certain that information concerning possible remedies provided by electronic means is genuinely accessible to applicants.

Amendment 33

Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

4. Paragraph 3 shall not apply to cases where disclosure of particular circumstances of a person to members of his/her family can jeopardize the interests of that person, including cases involving gender and/or age based persecution. In such cases, a separate decision shall be issued to the person concerned.

Amendment

4. Paragraph 3 shall not apply to cases where disclosure of particular circumstances of a person to members of his/her family can jeopardize the interests of that person, including cases involving gender, **sexual orientation, gender identity** and/or age based persecution. In such cases, a separate decision shall be issued to the person concerned.

Amendment 34

Proposal for a directive

Article 11 – paragraph 1 – point a

Text proposed by the Commission

(a) they shall 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 cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive [...]/EC [the Qualification Directive]. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 12;

Amendment

(a) they shall be informed in a language which they **understand or** 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 cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive [...]/EC [the Qualification Directive]. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 12;

Justification

It is vital to provide this information in a language which applicants understand so that, once the procedure has been launched, they are genuinely able to grasp as soon as possible the procedure to be followed and their rights and obligations.

Amendment 35

Proposal for a directive

Article 11 – paragraph 1 – point e

Text proposed by the Commission

(e) they shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor . The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 10(2).

Amendment

(e) they shall be informed of the result of the decision by the determining authority in a language that they ***understand or*** may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor . The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 10(2).

Justification

To ensure that they have access to effective remedy, it is vital for applicants to be informed of decisions concerning them in a language they understand and to have the information needed to lodge a valid appeal.

Amendment 36

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

1. Applicants for international protection shall ***cooperate with the competent authorities with a view to establishing*** their identity and other elements referred to in Article 4(2) of Directive [...]/.../EC [the Qualification Directive]. Member States may impose upon applicants other obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.

Amendment

1. Applicants for international protection shall ***be required to assist, to the extent of their physical and psychological capacities, in clarifying the situation and to reveal*** their identity, ***nationality*** and other elements referred to in Article 4(2) of Directive [...]/.../EC [the Qualification Directive] ***to the competent authorities. If they are not in possession of a valid passport or a document in lieu of a passport, applicants shall be required to cooperate in obtaining an identity document. So long as applicants are permitted to remain in the Member State under international protection during the consideration of the application, they shall not be required to enter into contact with authorities of their country of origin if there is reason to fear persecution by that State.*** Member States may impose upon applicants other obligations to cooperate with the competent authorities

insofar as these obligations are necessary for the processing of the application.

Amendment 37

Proposal for a directive

Article 12 – paragraph 2 – point d

Text proposed by the Commission

(d) the competent authorities may search the applicant and the items he/she carries with him/her, provided the search is carried out by a person of the same sex;

Amendment

(d) the competent authorities may search the applicant and the items he/she carries with him/her, provided the search is carried out by a person of the same sex ***who is sensitive to the applicant's age and culture and fully respects the principle of human dignity and physical and mental integrity***;

Amendment 38

Proposal for a directive

Article 13 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his/her application for international protection ***in a language which he/she understands*** with a person competent under national law to conduct such an interview. Interviews on ***the admissibility of an application for international protection and on*** the substance of an application for international protection shall always be conducted by the personnel of the determining authority.

Justification

Given the potentially serious consequences of an inadmissibility decision, the personal interview on the admissibility of an application must be conducted by the determining authority, which, in accordance with Article 4 of the Commission proposal, must have the necessary training to apply complex concepts such as safe third country and first country of asylum.

Amendment 39

Proposal for a directive

Article 13 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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

Amendment

Member States **shall** determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview, **taking due account of the child's best interests and special needs.**

Justification

To give greater weight to the principle of the best interests of the child, Member States must include in their national law the right of all children to be heard, on the understanding that the interview in question is in the best interests of the child and conducted by staff possessing the appropriate knowledge required concerning the special needs of minors (see also Article 21(3)(b)).

Amendment 40

Proposal for a directive

Article 13 – paragraph 2 – point b

Text proposed by the Commission

(b) 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, the **competent** authority shall consult a medical expert to establish whether the condition is temporary or permanent.

Amendment

(b) the **determining** 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, the **determining** authority shall consult a medical expert to establish whether the condition is temporary or permanent.

Justification

Reference should be made to the determining authority, so as to ensure that the Commission proposal is consistent in asserting the primacy of the principle that there should be a single determining authority.

Amendment 41

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where the **Member State** does not provide

Amendment

Where the **determining authority** does not

the applicant with the opportunity for a personal interview pursuant to point (b), or where applicable, to the dependant, **reasonable efforts** shall **be made to** allow the applicant or the dependant to submit further information.

provide the applicant with the opportunity for a personal interview pursuant to point (b), or where applicable, to the dependant, **the determining authority** shall allow the applicant or the dependant to **reschedule the personal interview and to** submit further information.

Amendment 42

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

3. 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 international protection .

Amendment

deleted

Amendment 43

Proposal for a directive Article 14 – paragraph 3 – point a

Text proposed by the Commission

(a) ensure that the person who conducts the interview is competent to take account of the personal **or** general circumstances surrounding the application, including the applicant's cultural origin, gender, or vulnerability;

Amendment

(a) ensure that the person who conducts the interview is **qualified, trained and** competent to take account of the personal **and** general circumstances surrounding the application, including the applicant's cultural origin, gender, **sexual orientation, gender identity**, or vulnerability;

Amendment 44

Proposal for a directive Article 14 – paragraph 3 – point c

Text proposed by the Commission

(c) select a competent 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 if there is another language

Amendment

(c) select a competent interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview **and is required to comply with a code of conduct laying down the rights and duties of the interpreter**. The communication need not

which he/she understands and in which he/she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests;

necessarily take place in the language preferred by the applicant if there is another language which he/she understands and in which he/she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests;

Justification

In the light of the shortcomings observed recently in the competence of interpreters, it is vital for a code of conduct for interpreters to be drawn up at national level. This will ensure that applicants have a genuine and proper opportunity to justify their application for protection and ensure better understanding and cooperation between interpreters and the staff conducting the interviews. The European Asylum Support Office (EASO) could assist in drawing up a code of conduct for interpreters.

Amendment 45

Proposal for a directive

Article 14 – paragraph 3 – point e

Text proposed by the Commission

e) ensure that interviews with minors are conducted in a child-friendly manner.

Amendment

(e) ensure that interviews with minors are conducted in a child-friendly manner **and by a person with the necessary knowledge of the special needs and rights of minors.**

Amendment 46

Proposal for a directive

Article 17 – paragraph 3

Text proposed by the Commission

3. Member States shall provide for relevant arrangements in order to ensure that impartial and qualified medical expertise is made available for the purpose of a medical examination referred to in paragraph 2.

Amendment

3. Member States shall provide for relevant arrangements in order to ensure that impartial and qualified medical expertise is made available for the purpose of a medical examination referred to in paragraph 2 **and that the less invasive medical examination is selected when the applicant is a minor.**

Amendment 47

Proposal for a regulation

Article 18 – Title

Text proposed by the Commission

Right to legal assistance and representation

Amendment

Right to ***advice on procedural and legal aspects***, legal assistance and representation

Amendment 48

Proposal for a directive

Article 18 – paragraph 2 – point a

Text proposed by the Commission

(a) provide for free ***legal assistance*** in procedures in accordance with Chapter III. This shall include, at least, the provision of information on the procedure to the applicant in the light of his/her particular circumstances and explanations of reasons in fact and in law in the case of a negative decision;

Amendment

(a) provide for free ***advice on procedural and legal aspects*** in procedures in accordance with Chapter III. This shall include, at least, the provision of information on the procedure to the applicant in the light of his/her particular circumstances, ***preparation of the necessary procedural documents, including during the personal interview,*** and explanations of reasons in fact and in law in the case of a negative decision. ***Such advice may be delivered by a qualified non-governmental organisation or by qualified professionals.***

Amendment 49

Proposal for a directive

Article 18 – paragraph 2 – point b

Text proposed by the Commission

(b) provide for free legal assistance ***or*** representation in procedures in accordance with Chapter V. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.

Amendment

(b) provide for free legal assistance ***and*** representation in procedures in accordance with Chapter V. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.

Amendment 50

Proposal for a directive

Article 18 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) only **to** legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for international protection.

Amendment

(b) only **for the services provided by** legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for international protection.

Justification

Amendment needed to clarify the original clumsy wording of the text.

Amendment 51

Proposal for a regulation

Article 18 – paragraph 3 – subparagraph 2

Text proposed by the Commission

With respect to the procedures provided for in Chapter V, Member States may choose to only make free legal assistance and/or representation available to applicants insofar as such assistance is necessary to ensure their effective access to justice. Member States shall ensure that legal assistance and/or representation granted pursuant to this paragraph is not arbitrarily restricted.

Amendment

With respect to the procedures provided for in Chapter V, Member States may choose to only make free legal assistance and/or representation available to applicants insofar as such assistance is necessary to ensure their effective access to justice. Member States shall ensure that legal assistance and/or representation granted pursuant to this paragraph is not arbitrarily restricted. ***Member States may grant such legal assistance and/or representation only if there is a sufficient prospect of success as assessed by the court.***

Amendment 52

Proposal for a directive

Article 18 – paragraph 5

Text proposed by the Commission

5. Member States **may** allow non-governmental organisations **to provide** free legal assistance and/or representation to applicants for international protection in procedures provided for in Chapter III

Amendment

5. Member States **shall** allow **and facilitate the provision by** non-governmental organisations **of** free legal assistance and/or representation to applicants for international protection in procedures

and/or Chapter V.

provided for in Chapter III and/or Chapter V.

Amendment 53

Proposal for a directive Article 19 – paragraph 3

Text proposed by the Commission

3. Member States shall allow the applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

Amendment

3. Member States shall allow the applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law, **or a qualified expert.**

Amendment 54

Proposal for a directive Article 20 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. In accordance with Article 21 of Directive [...]/EU] [laying down minimum standards for the reception of asylum seekers] (the Reception Conditions Directive), Member States shall establish procedures in national law with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such needs.

Justification

The special guarantees introduced by the Commission proposal for applicants with special needs cannot be implemented effectively unless a mechanism is established to enable such applicants to be systematically identified.

Amendment 55

Proposal for a directive Article 20 – paragraph 2

Text proposed by the Commission

2. In cases where the determining authority consider that an applicant has been

Amendment

2. In cases where the determining authority consider that an applicant has been

subjected to torture, rape or other serious forms of psychological, physical or sexual violence as described in Article 21 of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers (the Reception Conditions Directive)], the applicant shall be granted sufficient time and relevant support to prepare for a personal interview on the substance of his/her application.

subjected to torture, rape or other serious forms of psychological, physical or sexual violence as described in Article 21 of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers (the Reception Conditions Directive)], the applicant shall be granted sufficient time and relevant support to prepare for a personal interview on the substance of his/her application. ***Particular attention shall be given to those applicants who did not mention their sexual orientation at the outset.***

Amendment 56

Proposal for a directive

Article 20 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In accordance with the conditions laid down in Article 18, applicants with special needs shall enjoy free legal assistance in all procedures provided for in this Directive.

Justification

The aim is to ensure effective implementation of the enhanced guarantees provided for in Article 20.

Amendment 57

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) ***as soon as possible*** take measures to ensure that a representative represents and assists the unaccompanied minor with respect to the lodging and the examination of the application. The representative shall be impartial and have the necessary expertise in the field of childcare. This representative can also be the representative referred to in Directive [.../.../EC] [the Reception Conditions Directive];

(a) ***immediately*** take measures to ensure that a representative represents and assists the unaccompanied minor with respect to the lodging and the examination of the application. The representative shall be impartial and have the necessary expertise in the field of childcare. This representative can also be the representative referred to in Directive [.../.../EC] [the Reception Conditions Directive];

Amendment 58

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(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 ensure that a representative and/or a legal advisor or other counsellor admitted as such under national law are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

Amendment

(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 ensure that a representative and/or a legal advisor or other counsellor admitted as such under national law ***or other qualified professional*** are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

Amendment 59

Proposal for a directive

Article 21 – paragraph 2

Text proposed by the Commission

2. Member States may refrain from appointing a representative where the unaccompanied minor:

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

b) is married or has been married.

Amendment

deleted

Justification

Article 21(2)(a) should be deleted so that Member States are not tempted to delay the taking of decisions at first instance, when what is needed is a generous – and non-discriminatory – approach to minors who will reach the age of maturity during the procedure. The same applies to Article 21(2)(b). In some countries the marriageable age may be very low, but this has no bearing on the degree of maturity or independence of the minor concerned.

Amendment 60

Proposal for a directive

Article 21 – paragraph 3 – point a

Text proposed by the Commission

(a) If an unaccompanied minor has a personal interview on his/her application for international protection as referred to in Articles 13, 14 and 15 that interview is conducted by a person who has the necessary knowledge of the special needs of minors;

Amendment

(a) If an unaccompanied minor has a personal interview on his/her application for international protection as referred to in Articles 13, 14 and 15 that interview is conducted by a person who has the necessary knowledge of the special needs ***and rights*** of minors;

Amendment 61

Proposal for a directive

Article 21 – paragraph 3 – point b

Text proposed by the Commission

(b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

Amendment

(b) an official with the necessary knowledge of the special needs ***and rights*** of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

Amendment 62

Proposal for a directive

Article 21 – paragraph 4

Text proposed by the Commission

4. Subject to the conditions set out in Article 18, unaccompanied minors shall be granted free legal ***assistance with respect to all procedures provided for in this Directive.***

Amendment

4. Subject to the conditions set out in Article 18, unaccompanied minors ***together with their appointed representative shall, with respect to all procedures provided for in this Directive,*** be granted free legal ***advice on procedural and legal aspects and free legal representation.***

Amendment 63

Proposal for a directive

Article 21 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an

Amendment

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an

application for international protection , where, following his/her general statements or other relevant evidence, Member States still have doubts concerning his/her age.

application for international protection, where, following his/her general statements or other relevant evidence, Member States still have doubts concerning his/her age. ***If those doubts persist after the medical examination, any decision shall always be for the benefit of the unaccompanied minor.***

Amendment 64

Proposal for a directive

Article 21 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

Any medical examination shall be performed in full respect of the individual's dignity, selecting the less invasive exams.

Does not affect the English version.

Justification

Linguistic amendment to the German version, bringing it closer to the English ('less invasive').

Amendment 65

Proposal for a directive

Article 21 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

Any medical examination shall be performed in full respect of the individual's dignity, selecting the less invasive exams.

Any medical examination shall be performed in full respect of the individual's dignity, selecting ***the most reliable and*** the less invasive exams ***and carried out by qualified and impartial medical experts.***

Amendment 66

Proposal for a directive

Article 21 – paragraph 5 – subparagraph 3 – point a

Text proposed by the Commission

Amendment

(a) unaccompanied minors are informed prior to the examination of their application for international protection , and in a language which they understand, of the possibility that their age may be

(a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language which they ***may reasonably be supposed to*** understand, of the

determined by 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 international protection , as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

possibility that their age may be determined by 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 international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

Justification

For practical reasons and in view of the difficulty of proving language proficiency, the wording of the current Directive is preferable.

Amendment 67

Proposal for a directive

Article 21 – paragraph 5 – subparagraph 3 – point c

Text proposed by the Commission

(c) the decision to reject an application for international protection from an unaccompanied minor who refused to undergo this medical examination shall not be based ***solely*** on that refusal.

Amendment

(c) the decision to reject an application for international protection from an unaccompanied minor who refused to undergo this medical examination shall not be based on that refusal.

Justification

A minor's refusal to undergo this medical examination may be based on a variety of reasons not connected with his or her age or the grounds for his or her application for protection.

Amendment 68

Proposal for a directive

Article 22 a (new)

Text proposed by the Commission

Amendment

Article 22a

Detention of minors

The detention of minors shall be strictly prohibited in all circumstances.

Amendment 69

Proposal for a directive Article 23 – paragraph 1

Text proposed by the Commission

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant explicitly withdraws his/her application for international protection, Member States shall ensure that the determining authority takes a decision to ***either*** discontinue the examination ***or*** ***reject the application.***

Amendment

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant explicitly withdraws his/her application for international protection, Member States shall ensure that the determining authority takes a decision to discontinue the examination, ***and explain to the applicant the consequences of the withdrawal.***

Justification

Explicit withdrawal of an application should result in closure of the procedure and not rejection of the application. A decision to reject an application should only be taken after consideration of its substance.

Amendment 70

Proposal for a directive Article 24 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened .

Amendment

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened . ***Only one request for a case to be reopened may be submitted during an asylum procedure.***

Amendment 71

Proposal for a directive Article 26 – point b

Text proposed by the Commission

(b) obtain any information from the alleged actor(s) of persecution or serious harm in a manner that would result in such actor(s)

Amendment

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

being 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.

Justification

In the interests of consistency with the requirement laid down in point (a) of the same article.

Amendment 72

Proposal for a directive

Article 27 – paragraph 4 – subparagraph 2

Text proposed by the Commission

*The consequences of failure to adopt a decision **within the time limits provided for in paragraph 3 shall be determined in accordance with national law.***

Amendment

*At the end of the period referred to in paragraph 3, in the event of failure to adopt a decision, **the burden of proof for challenging the granting of protection to an applicant shall be on the determining authority.***

Justification

In order to prevent differences of interpretation and application, which would run counter to the objective of harmonising the common European asylum system, the consequences of failure to adopt a decision within the time limits provided for must be determined.

Amendment 73

Proposal for a directive

Article 27 – paragraph 5 – introductory part

Text proposed by the Commission

5. *Member States* may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II:

Amendment

5. *The determining authorities* may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II:

Amendment 74

Proposal for a directive

Article 27 – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) where the applicant has special needs;

(b) where the applicant has special needs,
in particular unaccompanied minors;

Amendment 75

Proposal for a directive

Article 27 – paragraph 6 – point d a (new)

Text proposed by the Commission

Amendment

(da) the applicant has made clearly inconsistent, contradictory, improbable, insufficient or false representations which make his/her claim plainly unconvincing in relation to his/her having been the object of persecution referred to in Directive [...]/EC [the Qualification Directive]; or

Justification

Article 23(4)(g) of Directive 2005/85/EC should be maintained. The possibility of rejecting an application in an accelerated procedure should also be provided for cases in which the submissions made by persons seeking protection are clearly unreliable and unbelievable.

Amendment 76

Proposal for a directive

Article 27 – paragraph 6 – point e

Text proposed by the Commission

Amendment

(e) the application was made by an unmarried minor to whom Article 6 (7) (c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin; or

deleted

Justification

See justification to Amendment 9.

Amendment 77

Proposal for a directive
Article 27 – paragraph 6 – point f c (new)

Text proposed by the Commission

Amendment

(fc) the applicant may for serious reasons be considered a danger to the national security of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law.

Justification

Article 23(4)(m) of Directive 2005/85/EC should be maintained. The possibility of ordering the immediate removal of persons posing a risk to security is urgently necessary in an age when terrorist networks operate globally.

Amendment 78

Proposal for a directive
Article 27 – paragraph 9

Text proposed by the Commission

Amendment

9. The fact that an application for international protection was submitted after an irregular entry into the territory or at the border, including in transit zones, as well as the lack of documents or use of forged documents, shall not per se entail an automatic recourse to an accelerated examination procedure.

9. The fact that an application for international protection was submitted after an irregular entry into the territory or at the border, including in transit zones, as well as the lack of documents ***on entry*** or ***the*** use of forged documents, shall not per se entail an automatic recourse to an accelerated examination procedure.

Justification

Asylum seekers may find themselves obliged to use forged travel documents in order to leave the country of persecution. They must however reveal their true identity to the determining authority after entry. An individual case history of persecution can only be established if the identity and nationality of the applicant are known. It is a major security risk to allow persons to remain whose identity has not been established due to a refusal on their part to cooperate.

Amendment 79

Proposal for a directive
Article 28

Text proposed by the Commission

Amendment

Without prejudice to Article 23, Member

Member States shall only consider an

States shall only consider an application for international protection as unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive [.../..EC] [the Qualification Directive].

application for international protection as unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive [.../..EC] [the Qualification Directive].

Justification

An application for international protection should be considered unfounded if, and only if, the determining authority has established that the applicant does not meet the necessary conditions.

Amendment 80

Proposal for a directive Article 30 – paragraph 1

Text proposed by the Commission

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 29 in their particular circumstances before a decision to consider an application inadmissible is taken. To that end, **Member States** shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 36 in cases of subsequent applications.

Amendment

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 29 in their particular circumstances before a decision to consider an application inadmissible is taken. To that end, **the determining authority** shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 36 in cases of subsequent applications.

Justification

Given the potentially serious consequences of an inadmissibility decision, the personal interview on the admissibility of an application must be conducted by the determining authority, which, in accordance with Article 4 of the Commission proposal, must have the necessary training to apply complex concepts such as safe third country and first country of asylum.

Amendment 81

Proposal for a directive Article 30 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that the member of staff of the determining

authority who conducts the interview on the admissibility of the application does not wear a uniform.

Justification

In the interests of consistency, a requirement similar to that prohibiting the wearing of a uniform by the staff conducting an interview on the substance of an application should also apply to staff conducting an interview on the admissibility of an application. The wearing of a uniform may generate confusion on the part of the applicant as to the exact function of the interviewer and undermine the sense of confidentiality and impartiality which is vital if the interview is to proceed smoothly.

Amendment 82

Proposal for a directive

Article 31 – paragraph 1 – point b

Text proposed by the Commission

(b) he/she otherwise enjoys **sufficient** protection in that country, including benefiting from the principle of non-refoulement;

Amendment

(b) he/she otherwise enjoys **effective** protection in that country, including benefiting from the principle of non-refoulement;

Justification

The expression ‘sufficient protection’ is not clearly defined in the proposal. The protection which an applicant must enjoy if he is sent to a first country of asylum must be effective and, in practice, accessible.

Amendment 83

Proposal for a directive

Article 31 – paragraph 2

Text proposed by the Commission

In applying the concept of first country of asylum to the particular circumstances of an applicant for international protection Member States **may** take into account Article 32 (1).

Amendment

In applying the concept of first country of asylum to the particular circumstances of an applicant for international protection Member States **shall** take into account Article 32 (1). ***The applicant shall be allowed to challenge the application of the concept of first country of asylum on the grounds that the first country of asylum in question is not safe in his or her particular case.***

Justification

In order to strengthen the safeguards against failure to respect the principle of non-refoulement, the Member States should apply the criteria for safe third countries laid down in Article 32(1). Similarly, while Article 30 guarantees the right to a personal interview, Article 31(2) should also provide the applicant with an effective opportunity to refute the presumption of safety in his or her particular circumstances, as guaranteed in Article 32(2)(c) on the application of the safe third country concept.

Amendment 84

Proposal for a directive Article 32

Text proposed by the Commission

Amendment

The safe third country concept

deleted

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

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

(b) there is no risk of serious harm as defined in [Directive/EC] [the Qualification Directive];

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

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national legislation, including:

(a) rules requiring a connection between the person seeking international protection and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(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 the third country is not safe in his/her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him/her and the third country in accordance with point (a). When implementing a decision solely based on this Article, Member States shall:

3. When implementing a decision solely based on this Article, Member States 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.

4. Where the third country does not permit the applicant for international protection 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.

5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

Amendment 85

Proposal for a directive Article 33

Text proposed by the Commission

Amendment

National designation of third countries as safe countries of origin ***deleted***

1. Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of safe countries of origin for the purposes of examining applications for international protection. .

2. Member States shall ensure a regular review of the situation in third countries designated as safe in accordance with this Article.

3. 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 European Asylum Support Office, the UNHCR, the Council of Europe and other relevant international organisations.

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

Justification

The aim is to establish a common European asylum system. The definitions of safe third countries must therefore also be uniform in all Member States.

Amendment 86

Proposal for a directive Article 34

Text proposed by the Commission

Amendment

The safe country of origin concept

deleted

1. A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

(a) he/she has the nationality of that country;

(b) he/she is a stateless person and was formerly habitually resident in that country;

(c) 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 and in terms of his/her qualification as a refugee or a person eligible for subsidiary protection in accordance with [Directive/EC] [the Qualification Directive] .

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

Justification

The aim is to establish a common European asylum system. The definitions of safe third countries must therefore also be uniform in all Member States.

Amendment 87

Proposal for a directive Article 35 – paragraph 1

Text proposed by the Commission

Amendment

1. Where a person who has applied for international protection 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

1. Where a person who has applied for international protection 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.

examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the **determining authority** can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

Justification

Only the determining authority is competent to assess all the elements underlying the further representations or subsequent application. This clarification will also help to streamline the procedure and improve the quality of the decision-making process.

Amendment 88

Proposal for a directive Article 35 – paragraph 6

Text proposed by the Commission

6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article 41.

Amendment

deleted

Justification

The Member States should not systematically refuse to examine a subsequent application on the pretext that the applicant could have brought forth the new elements or facts during the previous procedure or related appeal. An automatic refusal of this kind could result in a breach of the principle of non-refoulement.

Amendment 89

Proposal for a directive Article 37 – paragraph 1 – point a

Text proposed by the Commission

(a) the admissibility of an application made at such locations; and/or

Amendment

(a) the admissibility of an application, ***within the meaning of Article 29***, made at such locations; and/or

Justification

Given the potentially serious consequences of an inadmissibility decision, the personal interview on the admissibility of an application must be conducted by the determining authority, which, in accordance with Article 4 of the Commission proposal, must have the necessary training to apply complex concepts such as safe third country and first country of asylum. The Commission proposal reaffirms that border procedures must also comply with the basic principles and guarantees of Chapter II.

Amendment 90

Proposal for a directive Article 37 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant 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.

Amendment

2. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant 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. ***The holding of applicants at Member States' borders or transit zones is equivalent to placing them in detention, as referred to in Article 22.***

Justification

Holding applicants at Member States' borders or transit zones is equivalent to placing them in detention under the terms of Article 5(1)(f) of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the case law of the court responsible for its application. The arrangements for holding applicants at Member States' frontiers or transit zones should therefore satisfy the requirements laid down in this area in the Commission proposal on reception conditions (COM(2008) 815 final).

Amendment 91

Proposal for a regulation Article 38

Text proposed by the Commission

The ***European*** safe third countries concept
1. Member States may provide that no, or no full, examination of the asylum

Amendment

The safe third countries concept

application and of the safety of the applicant in his/her particular circumstances as described in Chapter II, shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for international protection 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 purposes of paragraph 1 where:

- (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;*
- (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 observes its provisions, including the standards relating to effective remedies.*

1. A third country may only be considered as a safe third country where a person seeking international protection will be treated in accordance with the following principles and conditions in the third country concerned:

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;*
- (b) there is no risk of serious harm as defined in [Directive .../.../EC] [the Qualification Directive];*
- (c) the principle of non-refoulement in accordance with the Geneva Convention is respected;*
- (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;*
- (e) the possibility exists to request refugee status or another complementary form of protection comparable to that granted under [Directive .../... EU] [the Qualification Directive] and, if granted such status or protection, to receive protection comparable to that afforded under [Directive .../... EU] [the Qualification Directive];*
- (f) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;*
- (g) it has in place an asylum procedure prescribed by law; and*

3. The 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, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.*

4. When implementing a decision *solely* based on this Article, the Member States

(h) it has been so designated by the Council and the Parliament in accordance with paragraph 2.
2. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, 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 Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and *rules requiring:*

(a) a connection between the person seeking international protection and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant;

(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 the third country is not safe in his/her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him/her and the third country in accordance with point (a)

4. When implementing a decision based on this Article, the Member States concerned

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.

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

shall inform the applicant accordingly.

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

5a. Member States shall not designate national lists of safe countries of origin or national lists of safe third countries.

Amendment 92

Proposal for a directive

Article 41 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. Member States shall provide for ***reasonable*** time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

Amendment

4. Member States shall provide for ***minimum*** time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

Justification

In view of the wide variety of time limits laid down by the Member States and the need to achieve a common asylum system as stipulated in Article 78 of the Treaty on the Functioning of the European Union, a minimum common time limit should be introduced to provide applicants with access to an effective remedy in law and in practice.

Amendment 93

Proposal for a directive

Article 41 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The time limits shall not render impossible or excessively difficult the access of applicants to an effective remedy pursuant to paragraph 1. Member States may also

Amendment

The Member States shall set a minimum time limit of forty-five working days during which applicants may exercise their right to an effective remedy. For

provide for an ex officio review of decisions taken pursuant to Article 37.

applicants under the accelerated procedure referred to in Article 27(6), the Member States shall lay down a minimum time limit of thirty working days. The time limits shall not render impossible or excessively difficult the access of applicants to an effective remedy pursuant to paragraph 1. Member States may also provide for an ex officio review of decisions taken pursuant to Article 37.

Justification

In view of the wide variety of time limits laid down by the Member States and the need to achieve a common asylum system as stipulated in Article 78 of the Treaty on the Functioning of the European Union, a minimum common time limit should be introduced to provide applicants with access to an effective remedy in law and in practice. The time limit laid down should vary in accordance with the procedure applied in each case.

Amendment 94

Proposal for a directive

Article 41 – paragraph 6 – subparagraph 1

Text proposed by the Commission

6. In the case of a decision taken in the accelerated procedure pursuant to Article 27 (6) and of a decision to consider an application inadmissible pursuant to Article 29 (2) (d), and ***where*** the right to remain in the Member State pending the outcome of the remedy is not foreseen under national legislation, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon request of the concerned applicant or acting on its own motion.

Amendment

6. In the case of a decision taken in the accelerated procedure pursuant to Article 27 (6) and of a decision to consider an application inadmissible pursuant to Article 29 (2) (d), and ***if, in such cases,*** the right to remain in the Member State pending the outcome of the remedy is not foreseen under national legislation, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon request of the concerned applicant or acting on its own motion.

Justification

Clarification needed to prevent possible confusion.

Amendment 95

Proposal for a directive

Article 45

Text proposed by the Commission

No later than [...], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every **five** years.

Amendment

No later than [...], the Commission shall report to the European Parliament and the Council on the application **and the financial cost** of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information **and financial data** that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every **two** years.

Amendment 96

**Proposal for a directive
Article 46 – subparagraph 2**

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 27(3) by [**three years** from the date of the transposition]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 27(3) by [**two years** from the date of the transposition]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.