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Committee on Civil Liberties, Justice and Home Affairs

2009/0165(COD)

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*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on minimum standards on procedures in Member States for granting and
withdrawing international protection (recast)
(COM(2009)0554 – C7-0248/2009 – 2009/0165(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sylvie Guillaume

(Recast – Rule 87 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	38
ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS	41
ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION	43

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast)
(COM(2009)0554 – C7-0248/2009 – 2009/0165(COD))**

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2009)0554),
 - having regard to Article 251(2) and Article 63, first indent, points 1(d) and 2(a), of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0248/2009),
 - having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
 - having regard to Article 294(3) and Article 78(2) of the Treaty on the Functioning of the European Union,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to its resolution of 10 March 2009 on the future of the Common European Asylum System,
 - having regard to the letter of 2 February 2010 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2010),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal, and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European

¹ OJ C 77, 28.3.2002, p. 1.

Parliament, the Council and the Commission;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

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

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 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, *and for 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

and, in the case of a negative decision, the right to an effective remedy before a court or tribunal.

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.

Or. fr

Justification

With certain exceptions, the Commission's proposal provides for automatic suspensive effect of appeals against first instance decisions. Accordingly, in the interests of consistency and rigour, it should be specified that applicants are allowed to remain in the Member State for as long as a competent court or tribunal authorises.

Amendment 2

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 3**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 the present Directive provides otherwise, in particular where it can be reasonably assumed 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 **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 in safety 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 4**Proposal for a directive****Recital 32**

Text proposed by the Commission

Amendment

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

deleted

Or. fr

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 5

Proposal for a directive Article 2 – point c

Text proposed by the Commission

Amendment

(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;

(c) "applicant" or "applicant for international protection" means **any individual who is not a citizen of a Member State in which he or she** has made an application for international protection in respect of which a final decision has not yet been taken;

Or. fr

Justification

The recasting of the procedures directive should extend the directive's scope to enable anyone to lodge an asylum application. The Geneva Convention relating to the Status of Refugees does not allow restrictions of this kind on its scope based on geographical or nationality criteria.

Amendment 6

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, 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;

Or. fr

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 7

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 legislation 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 the 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 the 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.

Or. fr

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 8

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. ***When applicants are unable to lodge their application in person, Member***

States shall ensure that a legal representative can lodge the application on their behalf.

Or. fr

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 9

**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***

Or. fr

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 10

**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

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

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.

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.

Or. fr

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 11

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 decision in accordance with the procedures at first instance set out in Chapter III ***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.

Or. fr

Justification

With a limited number of exceptions, the Commission proposal provides for automatic suspensive effect of appeals against first instance decisions. Accordingly, in the interests of consistency and rigour (see Article 41(5) and (6)), it should be specified that applicants are allowed to remain in the Member State for as long as a competent court or tribunal authorises.

Amendment 12

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 **and have undergone the initial and follow-up training programme referred to in Article 4(1);**

Or. fr

Justification

In the interests of consistency, explicit reference should be made to the training programmes referred to in Article 4(1) to be undertaken by staff at the determining authority responsible for examining applications.

Amendment 13

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).

Or. fr

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 14

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 stated in the decision and information on how to challenge a negative decision is given in writing.

Or. fr

Justification

Decisions stating the reasons in fact and in law must be reached for all applications for international protection and not only in the case of negative decisions. This is to enable the determining authority to give full consideration to cases which may result in a cessation decision and also allow persons subject to a cessation decision to appeal against it.

Amendment 15

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

Or. fr

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 16

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.

Or. fr

Amendment 17

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 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;

Or. fr

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 18

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 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).

Or. fr

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 19

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

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 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

conducted by the personnel of the determining authority.

substance of an application for international protection shall always be conducted by the personnel of the determining authority.

Or. fr

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 20

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.**

Or. fr

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 21

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

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

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.

Or. fr

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 22

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 **member of staff of the determining authority** who conducts the interview is 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;

Or. fr

Justification

Reference should be made to the determining authority in the interests of consistency. Furthermore, it is vital that, when preparing the interview, the authority should take account both of the personal circumstances of the applicant and the general circumstances surrounding the application. The aim is to improve both the efficiency and quality of the decision-making process from the outset ('frontloading').

Amendment 23

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

Text proposed by the Commission

(c) select a competent interpreter who is

Amendment

(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 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;

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 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;

Or. fr

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 24

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 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, **preparation of the necessary procedural documents, representation, including during the personal interview,** and explanations of reasons in fact and in law in the case of a negative decision;

Or. fr

Justification

Subject to the conditions laid down in Article 18(3), during first instance procedures applicants must have access to free legal assistance and representation to provide them with a genuine opportunity to justify their application for protection. In the long term, this will also enable determining authorities to improve the efficiency and quality of the decision-making process from the outset, by taking soundly reasoned decisions less likely to be overturned on appeal.

Amendment 25

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.

Or. fr

Justification

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

Amendment 26

Proposal for a directive

Article 20 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Pursuant to Article 21 of Directive [...]/EU] [laying down minimum standards for the reception of asylum seekers] (directive on reception conditions), Member States shall establish procedures in national legislation 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 27

**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.

Or. fr

Justification

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

Amendment 28

**Proposal for a directive
Article 21 – paragraph 2**

Text proposed by the Commission

Amendment

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

deleted

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.

Or. fr

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 29

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.

Or. fr

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 30

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.

Or. fr

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 31

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) 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.

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 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.

Or. fr

Justification

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

Amendment 32

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 lie with the determining authority.

Or. fr

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 33

Proposal for a directive

Article 27 – paragraph 6 – point c

Text proposed by the Commission

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

Amendment

c) ***without prejudice to Article 27(9)***, the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or

Or. fr

Justification

In accordance with HCR Executive Committee conclusion No 30 (XXXIV) of 20 October 1983, ‘manifestly abusive’ applications may be subject to an accelerated examination procedure. Nevertheless, to prevent overuse of this justification, reference should be made to the requirement laid down in Article 27(9).

Amendment 34

Proposal for a directive

Article 27 – paragraph 6 – point d

Text proposed by the Commission

d) it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

Amendment

deleted

Or. fr

Justification

The wording 'it is likely that, in bad faith,' is too vague and open to different interpretations that could result in abusive use of the accelerated procedure.

Amendment 35

Proposal for a directive Article 28

Text proposed by the Commission

Without prejudice to Article 23, Member 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].

Amendment

Member 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].

Or. fr

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 36

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 37

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 38

Proposal for a directive
Article 31 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

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 39

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.***

Or. fr

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 40

Proposal for a directive Article 32 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Member States may apply the safe third country concept only where the **determining authority is** satisfied that a person seeking international protection will

treated in accordance with the following principles in the third country concerned:

be treated in accordance with the following principles in the third country concerned:

Or. fr

Justification

The application of the safe third country concept requires appropriate expertise and experience, as well as access to relevant information concerning the country in question, which necessarily implies that it is the determining authority which should be responsible. Less scrupulous application of the concept owing to lack of sufficient expertise and experience could increase the risk of an applicant being returned to face persecution and serious danger in breach of the 1951 Convention and other international treaties.

Amendment 41

Proposal for a directive

Article 32 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

(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].***

Or. fr

Justification

Applicants must also be able to request a complementary form of protection in the safe third country concerned comparable to that granted under the Qualification Directive. The aim is also to ensure greater consistency with one of the criteria laid down in Article 32(1)(b), which requires that in the third country concerned there should be no risk of serious harm as defined in the Qualification Directive.

Amendment 42

Proposal for a directive

Article 32 – paragraph 2 – point b

Text proposed by the Commission

(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;

Amendment

(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** national designation of countries considered to be generally safe;

Or. fr

Justification

The methodology used at national level to apply the safe third country concept should not be confined to a general designation of a country as being a safe third country; it must also include a case-by-case consideration, bearing in mind the particular circumstances of the applicant. In this connection, the use of the wording ‘and/or’ does not seem consistent with Article 32(2)(c), which provides for an individual examination of whether the third country concerned is safe for a particular applicant.

Amendment 43

**Proposal for a directive
Article 34 – paragraph 1 – point c**

Text proposed by the Commission

(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] .

Amendment

(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]. ***The applicant shall be allowed to challenge the application of the safe country of origin concept and the safe character of his/her country in his/her particular case.***

Or. fr

Justification

If, under the terms of Article 34(1)(c), the burden of proof rests entirely with the applicant, then the latter must be given a real opportunity to refute the presumption of safety, as guaranteed in Article 32(2)(c) on the application of the safe third country concept.

Amendment 44

Proposal for a directive Article 35 – paragraph 1

Text proposed by the Commission

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.

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 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.

Or. fr

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 45

Proposal for a directive Article 35 – paragraph 2 – point a

Text proposed by the Commission

(a) after his/her previous application has been withdrawn by virtue of Article 23;

Amendment

deleted

Justification

A preliminary examination is justified only where the substance of the previous application has been examined. It is therefore wrong that an application lodged following the withdrawal of a previous application should be considered a subsequent application.

Amendment 46**Proposal for a directive
Article 35 – paragraph 3***Text proposed by the Commission*

3. A subsequent application for international protection shall be subject first to a preliminary examination as to whether, ***after the withdrawal of the previous application or*** after the decision referred to in paragraph 2(b) of this Article on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee or a person eligible for subsidiary protection by virtue of Directive [...]/EC [the Qualification Directive] have arisen or have been presented by the applicant.

Amendment

3. A subsequent application for international protection shall be subject first to a preliminary examination as to whether, after the decision referred to in paragraph 2(b) of this Article on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee or a person eligible for subsidiary protection by virtue of Directive [...]/EC [the Qualification Directive] have arisen or have been presented by the applicant.

Justification

A preliminary examination is justified only where the substance of the previous application has been examined. It is therefore wrong that an application lodged following the withdrawal of a previous application should be considered as a subsequent application.

Amendment 47**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

Amendment

deleted

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.

Or. fr

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 48

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

Text proposed by the Commission

Amendment

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

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

Or. fr

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 49

**Proposal for a directive
Article 37 – paragraph 2**

Text proposed by the Commission

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

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.

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.***

Or. fr

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 50

Proposal for a directive Article 38

Text proposed by the Commission

Amendment

The European safe third countries concept

deleted

1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II, 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.

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, 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.

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.

Or. fr

Justification

The concept of 'safe third European country' is unacceptable as it stands. This concept, which is defined in very general terms, is not accompanied by any minimum guarantees or principles, since both territorial access and access to the asylum procedure can be refused. No category of applicants should be completely denied access to an asylum procedure in this way, as this would be an infringement of international obligations on the protection of

refugees. Furthermore, no Member State appears to apply this concept in practice at the present time.

Amendment 51

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.

Or. fr

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 52

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

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 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 53**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.

EXPLANATORY STATEMENT

Background

Work on the creation of a Common European Asylum System (CEAS) started immediately after the entry into force of the Treaty of Amsterdam in May 1999, on the basis of the principles approved by the Tampere European Council. During the first phase of the CEAS (1999-2005), the goal was to harmonise Member States' legal frameworks on the basis of minimum standards. Adopted on 1 December 2005, Council Directive 2005/85/EC on asylum procedures (hereinafter referred to as 'the Directive' or the 'Asylum Procedures Directive') was the last of the five pieces of EU asylum legislation.

At the end of this first phase, as provided for in the conclusions to the Tampere European Council and reaffirmed in the Hague programme, the Commission submitted proposals to the European Parliament and the Council designed to address the deficiencies noted and to ensure higher and more harmonised standards of protection within the Union. On 21 October 2009, the Commission submitted a proposal for the recasting of the Asylum Procedures Directive to the two co-legislators.

As was firmly underlined in the Stockholm programme, the aim of the second phase of legislative work on asylum consists in establishing a common area of protection and solidarity by 2012 based inter alia on a common asylum procedure. This is a crucial aspect and one which needs to be looked at in the new legal context arising from the entry into force of the Lisbon Treaty, under which the concept of 'minimum standards' referred to in Article 63 of the EC Treaty has been replaced by the more ambitious one of 'common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status' (Article 78(2)(d), TFEU).

The challenges of the new phase of harmonisation

Despite the efforts made over the last ten years to achieve harmonisation in the asylum sector, major discrepancies still remain between national provisions and in the way they are applied. Such disparities are incompatible with a common European asylum system and are an obstacle to its development. In particular, they run counter to one of the cornerstones of the Dublin system, which is based on the presumption that the Member States' asylum systems are comparable. In whichever Member State applicants lodge an asylum request, they must enjoy a high standard of treatment that is equivalent throughout the Union. While legislative harmonisation alone would not suffice to reduce these differences and would need to be backed up by enhanced practical cooperation among the Member States, the adoption of a sound European legal framework is a *sine qua non* if the Union wishes to introduce a common European asylum system in an adequate and effective manner, something which it has repeatedly pledged to do.

Today, therefore, the challenges are clear. Only by improving and harmonising the procedures and related guarantees will it be possible to achieve a common system. With this in mind, a fundamental revision of the Procedures Directive is absolutely vital, so as to provide an accessible, fair and effective procedure, as much in the interests of asylum-seekers as in those of the Member States.

A pragmatic and ambitious Commission proposal

The Commission starts from a clear premise, namely that, by favouring a minimalist approach, the previous directive encouraged not only a proliferation of different procedural arrangements at national level, but also shortcomings as regards procedural guarantees for asylum-seekers.

On the whole, your rapporteur believes that the Commission's recasting work can genuinely help to:

- achieve greater harmonisation, by improving the consistency of asylum instruments, by clarifying and consolidating legal concepts and procedural mechanisms and thus simplifying their application;
- improve international protection standards within the Union, by introducing new procedural guarantees, so as to ensure full compatibility between EU acquis standards and those established in the case law of the Court of Justice and the European Court of Human Rights; and
- enhance the quality and efficiency of asylum procedures by 'frontloading' services, advice and expertise and encouraging Member States to deliver, within a reasonable time, robust determinations at first instance. The Commission's proposed 'frontloading' would make it possible in particular to better identify cases of founded, unfounded and abusive applications, improve the defendability of negative decisions and reduce the risk of them being overturned by appeal bodies, and reduce reception and procedural costs in the Member States. The existence of common rules, more effectively and more consistently applied, should also prevent or reduce secondary movements within the Union and enhance mutual trust between the Member States.

The proposed amendments

The amendments proposed by your rapporteur therefore mirror the frontloading approach taken by the Commission proposal, with a view to achieving harmonised, fair and efficient procedures under the common European asylum system.

They aim in particular to:

- secure more consistent application of the concept of 'determining authority' and 'competent authority' in line with the principle of a single determining authority;
- achieve greater consistency between asylum instruments (as regards definitions and mechanisms);
- enhance the minimum procedural safeguards established by the case law of the Court of Justice and the European Court of Human Rights (particularly as regards the principle of equality of arms, the right to information, the right to be heard and the right to free legal assistance) and their consistent application in the directive;
- ensure due account is taken of the needs of vulnerable applicants and the best interests of children;
- revise essential procedural instruments, such as the concept of safe country of origin, safe third country and safe European third country, to ensure that they are uniformly applied with due regard for minimum rights guarantees and principles.

While being aware that there are still serious reservations within the Council about this proposal, your rapporteur nevertheless feels that it is vital for the European Parliament, as co-legislator on this occasion in the context of the second phase legislative work, to seize this opportunity to develop a common European asylum system that is fair and efficient. Asylum

policies have a direct impact on those seeking protection, as well as on the European Union's ability to develop and create a genuine area of freedom, security and justice.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

COMMITTEE ON LEGAL AFFAIRS
CHAIRMAN

Ref.: D(2010)5201

Mr Fernando LOPEZ AGUILAR
Chair of Civil Liberties, Justice
and Home Affairs Committee
ASP 11G306
Brussels

***Subject: Proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast)
COM(2009) 554 final of 21.10.2009 - 2009/0165 (COD)***

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, if in accordance with point 8 of the Interinstitutional Agreement the committee responsible intends also to submit amendments to the codified parts of the Commission proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsperson, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal or in the opinion of the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the

proposal contains a straightforward codification of the existing texts, without any change in their substance.

Furthermore, pursuant to Rules 87, the Committee on Legal Affairs considered that the technical adaptations suggested in the opinion of the abovementioned Working Party were necessary in order to ensure that the proposal complied with the recasting rules.

In conclusion, after discussing it at its meeting of 27 January 2010, the Committee on Legal Affairs, by 22 votes in favour and no abstentions¹, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in keeping with its suggestions and in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

Encl.: Opinion of the Consultative Working Party.

¹ Klaus-Heiner Lehne, Raffaele Baldassarre, Sebastian Valentin Bodu, Marielle Gallo, Alajos Mészáros, Lidia Joanna Geringer de Oedenberg, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Diana Wallis, Cecilia Wikström, Christian Engström, Jiří Maštálka, Francesco Enrico Speroni, Piotr Borys, Vytautas Landsbergis, Kurt Lechner, Arlène McCarthy, Toine Manders, Eva Lichtenberger, Sajjad Karim.

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 23 November 2009

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

**Proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection
COM(2009)554 of 21.10.2009 – 2009/0165(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 29 October and 4 November 2009 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings¹, an examination of the proposal for a directive of the European Parliament and of the Council recasting Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) The following parts of the text of the recast proposal should have been identified by using the grey-shaded type generally used for marking substantive changes:

- in recital 30, the proposed replacement of the words "*as a refugee*" with the words "*for international protection*";
- in Article 13(4), the words "*paragraph 2(b)*" and the proposed deletion of the words "*and (c) and paragraph 3*";
- in Article 21(1), introductory wording, and in Article 21(3)(a), the proposed deletion of the words "*and 14*" and the proposed adding of the words "*and 15*";

¹ The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

- in Article 24(1)(a), the proposed adding of the article number 15 and the proposed replacement of the article number 14 with article number 16;
- in Article 36(3)(b), the proposed deletion of the article number "32(2)" and the proposed adding of the article number "35(3)";
- in Article 40(1), first subparagraph, point (b), the proposed adding of the words "*and 15*";
- in Article 46, first paragraph, the final sentence "*They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive*";
- in Article 46, fourth paragraph, the final words "*and a correlation table between those provisions and this Directive*".

2) In Article 50, the final words of Article 46 of Council Directive 2005/85/EC ("*in conformity with the Treaty establishing the European Community*") should be re-introduced.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA
Jurisconsult

J.-C. PIRIS
Jurisconsult

L. ROMERO REQUENA
Director General