

EUROPEAN PARLIAMENT

2004



2009

Committee on Development

25.5.2005

2000/0238(CNS)

OPINION

of the Committee on Development

for the Committee on Civil Liberties, Justice and Home Affairs

on the amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (14203/2004 - COM(2002)0326 – C6-0200/2005 - 2000/0238(CNS))

Draftswoman: Feleknaş Uca

PA_Leg

SHORT JUSTIFICATION

BACKGROUND

1. According to the Conclusions of the Presidency at the Tampere European Council in October 1999, restated by the Hague Programme adopted by the Brussels European Council in November 2004, a common European asylum system is to include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers and the approximation of rules on the recognition and content of the refugee status. This is to be supplemented with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.
2. The European Commission presented its first proposal for a Directive¹ on minimum standards on procedures in Member States for granting and withdrawing refugee status in September 2000. On 20 September 2001, the European Parliament adopted the Watson report, approving the Commission proposal with 106 amendments. The negotiations in the Council did not produce an agreement on the basis of that draft and in December 2001 the European Council, in the Laeken declaration, requested the Commission to bring forward a modified proposal.
3. The modified draft proposal for a directive was issued on 18 June 2002² and after almost two years of negotiations the Council agreed on a "general approach"³ on which it decided to consult the Parliament again, which was done on 19 November 2004. Therefore, the amendments proposed in this opinion refer to the modified draft proposal for a directive, as amended by the Council in its "general approach".
4. The Directive is to be adopted, in accordance with Article 63(1)(d) TEC, by consultation procedure of the Parliament and by unanimity vote in the Council. After the adoption of this directive, and in accordance with Article 67 TEC, all the legislation in this field is to be adopted by codecision procedure and majority voting in the Council.
5. It is your draftperson's view that the opinion of the Committee on Development should be confined to the areas where its competencies might be affected, and, notably, areas such as the political dialogue with developing countries, the promotion of democratic values, good governance and human rights in developing countries, and matters relating to the ACP-EU Partnership Agreement.
6. That is the reason why the opinion submitted for the consideration of the Committee on Development does not enter into more technical areas falling under the direct competency of the Committee on Civil Liberties, Justice and Home Affairs as the leading Committee.

¹ COM(2000)0578.

² COM(2002)0326.

³ CSL 14203/04, 9.11.2004

7. Having said that, your draftsman considers that the modified Commission proposal, as amended by the 'general approach' adopted by the Council on 29 April 2004, is a considerable step back compared to the initial proposal and to the objectives set by the Commission itself: *'the main aim of this Directive is to introduce a minimum framework in the European Community on procedures for the determination of refugee status, ensuring that no Member State expels or returns an applicant for asylum in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'*¹.
8. In particular, your draftsman would like to draw the Members' attention to the fact that the 'general approach' adopted by the Council provides for possibilities for Member States to derogate from almost every provision, and especially from the basic principles and guarantees established in Chapter II of the directive (Article 24). Under these circumstances, the rights and guarantees of applicants become fragile, and the basis for appeals might always be turned down as unfounded. Your draftsman has decided not to present amendments related to these issues at this stage, since it would involve substantial changes of a technical character which are better dealt by other Committees (such as LIBE or JURI). However, in the event that such Committees do not take account of these concerns, your draftsman will consider presenting them either in the Development Committee at a later stage, as amendments, or in plenary.

AMENDMENTS

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

Text proposed by the Council²

Amendments by Parliament

Amendment 1

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

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

¹ COM(2002)0326.

² CSL 14203/04, 9.11.2004

observed.

Justification

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

Amendment 2

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

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

Justification

See amendment 1.

Amendment 3

Article 5, paragraph 5 a (new)

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

Justification

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

Amendment 4

Article 15, paragraph 2, point (c)

(c) is married or has been married.

deleted

Justification

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

Amendment 5 Article 17, paragraph 1

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

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Justification

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

Amendment 6 Article 30, paragraph 2

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

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

Justification

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

Amendment 7 Article 30, paragraph 3

3. When making its proposal under

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

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

Justification

See amendment 6.

Amendment 8
Article 30, paragraph 4

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

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

Justification

See amendment 6.

Amendment 9
Article 30, paragraph 8

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

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

Justification

See amendment 6.

Amendment 10
Article 30A, paragraph 2

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

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

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

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

Justification

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

Amendment 11
Article 35A, paragraph 3

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

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

Justification

See amendment 6.

Amendment 12
Article 35, paragraph 4

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

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

PROCEDURE

Title	Amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status
References	14203/2004 - COM(2002)0326 – C6-0200/2005 - 2000/0238(CNS)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	DEVE 1.12.2004
Enhanced cooperation	
Drafts(wo)man Date appointed	Felekнас Uca 16.3.2005
Discussed in committee	12.5.2005 24.5.2005
Date amendments adopted	24.5.2005
Result of final vote	for: 28 against: 0 abstentions: 0
Members present for the final vote	Margrete Auken, Alessandro Battilocchio, Margrietus van den Berg, Danutė Budreikaitė, Nirj Deva, Michael Gahler, Jana Hybášková, Filip Andrzej Kaczmarek, Glenys Kinnock, Ģirts Valdis Kristovskis, Maria Martens, Miguel Angel Martínez Martínez, Luisa Morgantini, Toomas Savi, Jürgen Schröder, Felekнас Uca, Anna Záborská, Jan Zahradil, Mauro Zani
Substitutes present for the final vote	John Bowis, Fiona Hall, Linda McAvan, Manolis Mavrommatis, Karin Scheele, Britta Thomsen, Zbigniew Zaleski, Gabriele Zimmer
Substitutes under Rule 178(2) present for the final vote	Agustín Díaz de Mera García Consuegra