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Committee on Legal Affairs

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OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

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

Draftswoman: Viktória Mohácsi

PA_Leg

SHORT JUSTIFICATION

I. Summary of the proposal

Background:

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minimum standards at the Community level for asylum procedures in Member States in which refugee status is granted or withdrawn.

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

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

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

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

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

II. Draftswoman's comments

General goal:

Your draftswoman is in full agreement that a common Community policy is required in the field of asylum. However, she expresses serious concerns that it would fall short of accepted international legal standards and could risk breaching Member States' obligations under the European Community's Charter of Fundamental Rights in addition to international and human rights refugee law.

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

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

derogate from the Directive's provisions safeguarding applicants' rights.

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

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

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

AMENDMENTS

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

Text proposed by the Council ¹	Amendments by Parliament
(5) The main objective of this Directive is to introduce a minimum framework in the European Community on procedures for granting and withdrawing refugee status.	<p data-bbox="703 1361 887 1435">Amendment 1 Recital 5</p> <p data-bbox="839 1464 1418 1760">(5) The main objective of this Directive is to introduce a minimum framework in the European Community on procedures for granting and withdrawing refugee status, <i>keeping in line with international standards, in particular the 1951 Geneva Convention on Refugees and the Tampere conclusions on Asylum.</i></p>

Justification

In order to ensure this Directive holds under the court of law, it must be in line with the 1951

¹ Not yet published in OJ.

Convention and others, namely the Tampere conclusions on asylum.

Amendment 2

Recital 8

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

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

Justification

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

Amendment 3

Recital 9

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

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

Justification

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

Amendment 4

Recital 13

(13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities

(13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the

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

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

Justification

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

Amendment 5 Recital 14

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

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

Justification

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

Amendment 6
Recital 17 a (new)

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

Justification

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

Amendment 7
Recital 19

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

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

Justification

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

Amendment 8
Recital 20

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

Justification

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

Amendment 9
Recital 21

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

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

designation of the country as safe can no longer be considered relevant for him/her.

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

Justification

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

Amendment 10

Recital 22

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

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

Justification

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

Amendment 11

Recital 23

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

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

Justification

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

Amendment 12 Recital 24

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

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

Justification

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

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

Amendment 13 Recital 24 a (new)

(24a) With respect to European third countries, it must be taken into account that concerns regarding human rights and refugee protection, in particular with regards to the Roma and other ethnic minorities, are well documented, as are instances of claimants having to flee a European third country after initially claiming asylum in it, due to human rights abuses against the claimant resulting from negative changes to the state's internal stability.

Persons claiming asylum after travelling through such states or after initially claiming asylum in such states cannot be denied the right to have their asylum applications processed within Member States in accordance with international law.

Justification

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

Amendment 14 Recital 25

(25) It follows from the nature of the

(25) It follows from the nature of the common

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

standards concerning **the** safe third country **concept** as set out in this Directive that the practical effect of the **concept** depends on whether the third country in question permits the applicant in question to enter its territory.

Justification

See Amendment to Article 35A.

Amendment 15
Article 1

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

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

Justification

Directive shall be in accordance with international asylum law.

Amendment 16
Article 2, point (h)

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

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

assume responsibility for long-term care of the child.

For the purpose of this Directive, "unaccompanied minor" will refer to both "unaccompanied children" and "separated children";

Justification

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

Amendment 17

Article 3, paragraph 1 a (new)

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

Justification

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

Amendment 18

Article 3A, paragraph 1, subparagraph 1

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

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

Justification

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

safeguarded.

Amendment 19
Article 3A, paragraph 3

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

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

Justification

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

Amendment 20
Article 5, paragraph 3 a (new)

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

Justification

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

Amendment 21
Article 5, paragraph 4, introductory part

4. Member States may determine, in national legislation

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

(CRC), in national legislation

Justification

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

Amendment 22
Article 6, paragraph 1

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

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

Justification

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

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

Amendment 23
Article 7, paragraph 1

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

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

Justification

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

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

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

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

Justification

Ensuring Directive is in accordance with international law.

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

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

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

Justification

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

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

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

Amendment 26

Article 7, paragraph 2, point (c)

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

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

Justification

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

Amendment 27

Article 7, paragraph 3

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

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

Justification

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

Amendment 28

Article 7, paragraph 4

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

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

Justification

Translation is a crucial issue in the asylum application process.

Amendment 29

Article 8, paragraph 1

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

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

Justification

A written record must be available of all decisions taken.

Amendment 30

Article 8, paragraph 2, subparagraph 3

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

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

Justification

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

Amendment 31

Article 9, paragraph 1, point (b)

(b) they must receive the services of **an** interpreter for submitting their case to the competent authorities whenever necessary. Member States shall **consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed** as referred to in Articles 10 and 11 and appropriate communication cannot be ensured without such services. In **this case** and in other cases where the competent authorities call upon the applicant, the services shall be paid for out of public funds;

(b) they must receive the services of **a qualified and impartial** interpreter for submitting their case to the competent authorities whenever necessary. Member States shall **guarantee this service during all personal interviews, appeal hearings and other verbal communications with the competent authorities, in particular** as referred to in Articles 10 and 11 and **when** appropriate communication cannot be ensured without such services. In **these** and in other cases where the competent authorities call upon the applicant, the services shall be paid for out of public funds;

Justification

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

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

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

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

Justification

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

Amendment 33
Article 10, paragraph 1, subparagraph 1

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

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

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

Justification

Right to an interview is central to determining asylum applications as witnessed in the case law of the ECHR, Human Rights Committee and the UNCAT Committee as well as being

referred to in the 1995 Council Resolution on Minimum Guarantees for Asylum Procedures. The original format of Article 10 undermines this right.

Amendment 34
Article 10, paragraph 1, subparagraph 2

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

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

Justification

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

Amendment 35
Article 10, paragraph 1, subparagraph 3

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

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

Justification

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

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

(b) the competent authority has already had a meeting with the applicant for the purpose

(b) the competent authority has already had a meeting with the applicant for the purpose

of assisting him/her with filling his/her application and submitting the essential information regarding the application, in terms of Article 4(2) of Council Directive 2004/83/EC; or

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

Justification

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

Amendment 37

Article 10, paragraph 2, point (c)

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

Justification

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

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

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

Amendment 38

Article 10, paragraph 3

3. The personal interview may also be omitted, **where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be**

3. The personal interview may also be omitted **or terminated** where the **interviewer believes an applicant may have a mental or emotional disturbance which impedes a normal examination of his/her case. In**

interviewed owing to enduring circumstances beyond his/her control. When in doubt, Member States may require a medical or psychological certificate.

such instances, medical advice concerning the applicant's health must be sought from a medical practitioner and Member States shall require when in doubt a medical or psychological certificate.

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

Justification

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

Amendment 39
Article 10, paragraph 3 a (new)

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

Justification

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

Amendment 40
Article 10, paragraph 4

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

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

Justification

To ensure principle of non-refoulement is met.

Amendment 41
Article 10, paragraph 5

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

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

Justification

Ensuring the rights of minors and other dependants are met.

Amendment 42
Article 10, paragraph 6

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

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

Justification

To ensure safeguards in Article 20 are not overridden.

Amendment 43
Article 10, paragraph 6 a (new)

6a. If, in deciding on the application for asylum, the Member State takes into account the applicant's failure to appear for the interview, as determined in paragraph 6, the Member State must give

evidence that all possible means were used to inform the individual of the right to a personal interview. Failure to do so shall, if not remedied, invalidate any subsequent negative action taken.

Justification

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

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

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

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

Justification

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

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

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

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

Justification

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

Amendment 46
Article 11, paragraph 4

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

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

Justification

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

Amendment 47
Article 12, paragraph 3, subparagraph 1

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

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

Justification

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

Amendment 48
Article 12, paragraph 3, subparagraph 2

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

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

Justification

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

Amendment 49

Article 12, paragraph 3, subparagraph 3

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

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

Justification

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

Amendment 50

Article 13, paragraph 1

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

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

Justification

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

Amendment 51

Article 13, paragraph 3

3. Member States may provide in their national legislation that free legal assistance and/or representation be granted:
(a) only for the procedures before a court or tribunal in accordance with Chapter V and not to any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward

3. Member States may provide in their national legislation that free legal assistance and/or representation be granted:
(a) only for the procedures before a court or tribunal in accordance with Chapter V and not to any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward

appeal or review; and/or
(b) only to those who lack sufficient resources; and/or
(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; **and/or**
(d) only if the appeal or review is likely to succeed.

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

appeal or review; and/or
(b) only to those who lack sufficient resources; and/or
(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum.

Justification

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

Amendment 52

Article 13, paragraph 5, point (a)

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

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

Justification

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

Amendment 53

Article 14, paragraph 1, subparagraph 1

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

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

Justification

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

Amendment 54

Article 14, paragraph 1, subparagraph 2

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

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

Justification

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

Amendment 55

Article 15, paragraph 2, point (c)

(c) is married or has been married.

deleted

Justification

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

Amendment 56

Article 15, paragraph 5, point (a)

(a) unaccompanied minors are informed

(a) unaccompanied minors are informed

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

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

Justification

This amendment has no effect on the English version.

Amendment 57

Article 17, paragraph 1

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

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

(a) to verify identity;

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

(c) to protect national security or public order.

Justification

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

Amendment 58

Article 17, paragraph 2

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

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

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

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

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

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

Justification

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

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

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

Amendment 59

Article 20, paragraph 2, subparagraph 2

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

Justification

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

Amendment 60

Article 21, paragraph 1, introductory part

1. Member States **shall** allow the UNHCR :

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

Justification

In line with Article 35 of the 1951 Convention.

Amendment 61

Article 22, point (a)

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

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

Justification

"directly" is open to discrepancy and risks compromising efficacy as a safeguard.

Amendment 62

Article 23, paragraph 4, point (a)

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

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

Justification

The terminology "minimal relevance" does not grant legal security to the applicant because it is too vague and puts the principle of non-refoulement at risk.

Amendment 63

Article 23, paragraph 4, point (d)

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

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

Justification

Terminology "false information" is too subjective.

Amendment 64

Article 23, paragraph 4 a (new)

4a. Member States may provide for exceptions from the application of paragraph 4 for humanitarian reasons, particularly in situations involving trafficking in human beings, political reasons or for reasons of public international law.

Justification

Member States should lay down exceptions from the application of paragraph 4 which provide for asylum applications to be subject to a priority or accelerated examination procedure, particularly for humanitarian or political reasons or for reasons of public international law. The same provisions are also contained in Article 35a(4) of the Directive.

Amendment 65

Article 25, paragraph 2, point (d)

(d) the applicant is allowed to remain in the Member State concerned on some other ground and as result of this he/she has been granted a status equivalent to the rights and benefits of **the refugee status by virtue of Council Directive 2004/83/EC**;

(d) the applicant is allowed to remain in the Member State concerned on some other ground and as result of this he/she has been granted a status equivalent to the rights and benefits of **nationals in accordance with Article 1E of the Geneva Convention**;

Justification

Must be as broad as the 1951 Convention, Article 1E. Also, the Council Directive 2004/83/EC

does not incorporate all Convention rights as listed in Article 1E.

Amendment 66
Article 25, paragraph 2, point (e)

(e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of a status pursuant to (d);

(e) delete subject to AM 70 not being accepted;

Justification

If amendment 65 is not accepted, than Article 25 (2e) will not be running counter to the 1951 Convention.

Amendment 67
Article 25, paragraph 2, point (g)

(g) a dependant of the applicant lodges an application, after he/she has in accordance with Article 5 (3), consented to have his/her case be part of an application made on his/her behalf and there are no facts relating to the dependant's situation justifying a separate application.

deleted

Justification

An applicant who is a dependent shall not be penalized for a delayed individual application as personal trauma may have delayed an individual application or the guardian in question relinquishes his/her responsibilities. Each claimant shall have his/her right to have their asylum request analyzed on individual grounds.

Amendment 68
Article 27, paragraph 1, point (a)

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

deleted

Justification

Justification: not necessary as reference to the Geneva Convention in Article 27, paragraph 1a new will cover this point.

Amendment 69
Article 27, paragraph 2, point (a)

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

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

Justification

A “connection” could be conduced to mean the applicant passed the country in transit. Yet, in order to be transferred to the third country, the applicant must have a “meaningful” link with the country in question via family, a broader community, etc.

Amendment 70
Article 27, paragraph 2, point (c)

(c) rules, in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant **which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.**

(c) rules, in accordance with international law **and, specifically, the Geneva Convention**, allowing an individual examination of whether the third country concerned is safe for a particular applicant.

Justification

Reference to international law and the 1951 Convention will suffice.

Amendment 71
Article 27, paragraph 4

4. Where the third country does not permit the applicant for asylum in question to enter its territory, Member States shall ensure that

4. Where the third country does not permit the applicant for asylum in question to enter its territory, Member States shall ensure that

access to *a* procedure is given in accordance with the basic principles and guarantees described in Chapter II.

access to *an asylum* procedure is given in accordance with the basic principles and guarantees described in Chapter II.

Justification

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

Amendment 72
Article 29, paragraph 2

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

deleted

Justification

Undermines Article 29, paragraph 1.

Amendment 73
Article 30, paragraph 1

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

1. The Council shall, acting by a qualified majority on a proposal from the Commission and **in accordance with Article 251 of the Treaty**, adopt a common list of third countries.

Justification

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

Amendment 74
Article 30, paragraph 2

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

Justification

Article 67(5) of the EC outlines that further measures must be adopted under co-decision. And in accordance with Article 251 of the EC Treaty.

Amendment 75

Article 30, paragraph 3

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

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

Justification

Given the ever-changing human rights situations in third countries, Member States should make use of all relevant information, as organizations such as UNHCR. have more up-to-date information available given their expertise in the field. Not making use of such data could be detrimental to the applicant's safety in line with the 1951 Convention.

Amendment 76

Article 30, paragraph 4

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

4. Where the Council requests the Commission to submit, **pursuant to Article 251 of the Treaty**, a proposal for removing a third country from the common list, the **right** of Member States pursuant to Article 30B (2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a

submission.

Justification

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

Amendment 77

Article 30, paragraph 5

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

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

Justification

See justification for Article 30, paragraph 4.

Amendment 78

Article 30, paragraph 7

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

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

Justification

See justification for Article 30, paragraph 4.

Amendment 79
Article 30, paragraph 8

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

Justification

See justification for Article 30, paragraph 4.

Amendment 80

Article 30 a, paragraph 2, introductory part

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

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

Justification

For a Member State to designate a third country as a safe country of origin it is absolutely essential for it to ensure that the third country concerned does not engage in persecution or torture or carry out inhuman or degrading treatment or punishment.

Amendment 81

Article 30 a, paragraph 4

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

4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, **respect for**

application of the law and the general political circumstances in the third country concerned.

human rights and fundamental freedoms, the application of the law and the general political circumstances in the third country concerned.

Justification

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

Amendment 82
Article 30B, paragraph 1, final part

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

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

Justification

Original terminology is too subjective.

Amendment 83
Article 30B, paragraph 2

2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe **pursuant to Article 30**.

2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe **for the particular applicant**.

Justification

Safety of third countries should be determined on an individual basis.

Amendment 84
Article 30B, paragraph 3

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

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

concept.

will duly notify the Commission of any further rules and modalities.

Justification

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

Amendment 85

Article 33, paragraph 1

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

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

Justification

Given the need for flexibility in dealing with submissions by asylum applicants, in particular the cases of victims of trauma and torture, Member States should be obligated to examine all further representations, in line with ECHR and UNCAT case law.

Amendment 86

Article 33, paragraph 2, introductory part

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

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

Justification

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

Amendment 87
Article 33A

Article 33A

deleted

Member States may retain or adopt the procedure provided for in Article 33 in the case of an application for asylum filed at a later date by an applicant who, either intentionally or owing to gross negligence, fails to go to a reception centre or to appear before the competent authorities at a specified time.

Justification

Article is unrelated to the merits of the asylum claim, and is thus no more than a punitive measure.

Amendment 88
Article 34, paragraph 2, point (b)

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

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

Justification

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

Amendment 89
Article 35, paragraph 3, indent 3

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

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

Justification

Right to an interpreter and right to legal advisor are inherent rights, in accordance with 1951 Convention.

Amendment 90
Article 35, paragraph 3, indent 5

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

- **are given access to** a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 13 (1); and

Justification

Right to an interpreter and right to legal advisor are inherent rights, in accordance with 1951 Convention.

Amendment 91
Article 35, paragraph 5

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

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

Justification

"Non-nationals" in line with Geneva Convention terminology. Implementing an open-end time frame for border applicants defies the principle of equal treatment embedded in international law regardless of the circumstances in which they reached the state.

Such provisions also encourage incentives to enter countries illegally and discourage prompt application, rather than claiming asylum at the border.

Amendment 92
Article 36

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

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

Justification

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

Amendment 93
Article 36, point (a) (new)

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

Justification

Follows Amendment to Article 36.

Amendment 94
Article 36, point (b) (new)

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

Justification

Follows Amendment to Article 36.

Amendment 95
Article 36, point (c) (new)

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

Justification

Follows Amendment to Article 36.

Amendment 96
Article 36, point (d) (new)

(d) the applicant has voluntarily re-established residence in the country he/she once would not return to because of fear of persecution.

Justification

Follows Amendment to Article 36.

Amendment 97
Article 37, paragraph 4

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

Justification

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

Amendment 98
Article 38, paragraph 3, introductory part

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations ***dealing with:*** ***3. Member States shall, where appropriate, provide for rules in accordance with their international obligations and the principle of non-refoulement ensuring applicants may remain in the Member State pending the outcome of an appeal, regarding:***

Justification

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

Amendment 99 Article 38, paragraph 5

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

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

Justification

For reasons outlined in Article 25(2) (d), refugees have a right in having their refugee status recognized under the 1951 Convention and a right to an effective remedy against rejection, even if they have been granted a status which offers nearly identical rights as refugee rights, in accordance with the Qualification Directive.

Amendment 100 Article 43, paragraph 1

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

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

[36 months after the date of its adoption].

They shall forthwith inform the Commission thereof.

Justification

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

Amendment 101

Annex B to the Annex I, paragraph 1

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

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

Justification

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

Amendment 102

Annex B to the Annex I, paragraph 1, point (d a) (new)

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

Justification

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

PROCEDURE

Title	Amended proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status
References	14203/2004 – C6-0200/2004 – 2000/0238(CNS)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	JURI 15.12.2005
Enhanced cooperation	No
Drafts(wo)man Date appointed	Viktória Mohácsi 3.2.2005
Discussed in committee	20.6.2005 0.0.0000 0.0.0000
Date amendments adopted	20.6.2005
Result of final vote	for: 18 against: 1 abstentions: 0
Members present for the final vote	Maria Berger, Marek Aleksander Czarnecki, Antonio Di Pietro, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Piia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Marcin Libicki, Antonio Masip Hidalgo, Viktória Mohácsi, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroz, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina
Substitutes present for the final vote	Evelin Lichtenberger, Marie Panayotopoulos-Cassiotou, Michel Rocard, József Szájer
Substitutes under Rule 178(2) present for the final vote	