



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2009/0164(COD)

28.9.2010

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on minimum standards for the qualification and status of third country
nationals or stateless persons as beneficiaries of international protection and the
content of the protection granted

(recast)

(COM(2009)0551 – C7-0250/2009 – 2009/0164(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jean Lambert

(Recast – Rule 87 of the Rules of Procedure)

Symbols for procedures

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

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

Amendments to a draft act

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

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted

(recast)

(COM(2009)0551 – C7-0250/2009 – 2009/0164(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2009)0551),
 - having regard to Article 251(2) and Article 63(1), points 1(c), 2(a) and 3(a) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0250/2009),
 - having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
 - having regard to Article 294(3) and Article 78(2) of the Treaty on the Functioning of the European Union,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to the letter of 2 February 2010 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2010),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European

¹ OJ C 77, 28.3.2002, p. 1.

Parliament, the Council and the Commission;

2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 14, 15, 16, 18, 21, 24, 34 and 35 of the Charter and should be implemented accordingly.

Amendment

(15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 14, 15, 16, 18, 21, **23**, 24, 34 and 35 of the Charter and should be implemented accordingly.

Or. en

Justification

Article 23 of the Charter of Fundamental Rights of the European Union on equality between men and women should be added in order to ensure a gender sensitive approach in the examination of asylum applications.

Amendment 2

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child.

Amendment

(17) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child.

In assessing the best interests of the child, Member States should in particular take due account of the following factors:
(a) the preservation of family life, including family reunification possibilities in the case of separated children;
(b) the child's well-being and social development, taking into particular consideration the child's ethnic, religious, cultural and linguistic background and further having regard to the need for stability and continuity in care and custodial arrangements and access to health and education services;
(c) safety and security considerations, in particular, where there is a risk of the child being a victim of any form of violence and exploitation, including trafficking;
(d) the views of the child, with due weight being given to such views in accordance with the child's age and maturity.

Or. en

Justification

This provides clear guidance as to how the "best interests" should be defined when assessing protection needs and will help in the alignment of Member State practice.

Amendment 3

Proposal for a directive Recital 29

Text proposed by the Commission

(29) It is equally necessary to introduce a common concept of the persecution ground "membership of a particular social group". For the purposes of defining a particular social group, issues arising from an applicant's gender should be given due consideration.

Amendment

(29) It is equally necessary to introduce a common concept of the persecution ground "membership of a particular social group". For the purposes of defining a particular social group, issues arising from an applicant's gender, ***including gender identity and sexual orientation***, should be given due consideration.

Or. en

Justification

This addition ensures that the text fully reflects the gender dimension and the diverse and changing nature of groups in various societies, and evolving international human rights norms.

Amendment 4

Proposal for a directive

Article 2 – point j – introductory part

Text proposed by the Commission

(j) "family members" means, ***in so far as the family already existed in the country of origin***, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

Amendment

(j) "family members" means the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

Or. en

Justification

The qualifying clause "in so far as the family already existed in the country of origin" does not accommodate family ties which have been formed during flight or in the host country, including any children born after departure. Respect for family unity should not be conditional on the family having been established before flight from the country of origin and families, which have been formed during flight or upon arrival in the asylum state also need to be taken into account.

Amendment 5

Proposal for a directive

Article 2 – point k a (new)

Text proposed by the Commission

Amendment

(k a) the "best interests of the child" means those interests as established by reference to the UN Convention on the Rights of the Child and the recommendations, concluding observations and reports of the UN Committee on the Rights of the Child and

other UN agencies;

Or. en

Justification

This addition is necessary to clearly define the 'best interests of the child' in line with Recital 17.

Amendment 6

Proposal for a directive

Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

1. Protection against persecution or serious harm must be effective and durable and can only be provided by:

Amendment

1. Protection against persecution or serious harm must be effective and durable and can only be provided by ***the following actors who are willing and able to enforce the rule of law, and to be held accountable:***

Or. en

Justification

The phrase 'willing and able to enforce the rule of law' should also apply explicitly to the state as it should not be presumed that the state from which an asylum seeker seeks protection is necessarily 'willing and able to enforce the rule of law'. Those deemed to be in a position to offer effective protection should also be able to ensure their accountability under international law.

Amendment 7

Proposal for a directive

Article 7 – paragraph 1 – point b

Text proposed by the Commission

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State ***and which are willing and able to enforce the rule of law.***

Amendment

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.

Justification

The phrase 'willing and able to enforce the rule of law' should also apply explicitly to the state as it should not be presumed that the state from which an asylum seeker seeks protection is necessarily 'willing and able to enforce the rule of law'. Those deemed to be in a position to offer effective protection should also be able to ensure their accountability under international law.

Amendment 8
Proposal for a directive
Article 7 – paragraph 2
Text proposed by the Commission

2. Effective and durable protection is **generally** provided when the actors mentioned in paragraph 1 **take reasonable steps to** prevent the persecution or suffering of serious harm inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

Amendment

2. Effective and durable protection is provided when the actors mentioned in paragraph 1 prevent the persecution or suffering of serious harm inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

Justification

'Effective and durable protection' is the goal: if it cannot be achieved then "reasonable steps" are not enough.

Amendment 9
Proposal for a directive
Article 8 – paragraph 1
Text proposed by the Commission

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international

Amendment

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international

protection if he or she has access to protection against persecution or serious harm as defined in Article 7 in a part of the country of origin and he or she can safely and legally travel, gain admittance and settle in that part of the country.

protection if he or she has access to protection against persecution or serious harm as defined in Article 7 in a part of the country of origin and he or she can safely and legally travel, gain admittance and settle in that part of the country ***and be reasonably be expected to stay there.***

Or. en

Justification

The person concerned should be able to lead a relatively normal life in another part of the country of origin, without undue hardship (wording taken from UNHCR). The reasonableness analysis includes the assessment of different factors, including the personal circumstances of the applicant and the possibility for economic survival in the area, elements which a number of Member States already take into consideration. The maintenance of this requirement is also inline with UNHCR guidelines on International Protection: "internal flight or Relocation Alternative", a recent case of ECHR Salah Sheikh which includes wording on 'reasonability', and established jurisprudence confirming the relevance of the reasonableness test.

Amendment 10

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

2. In examining whether an applicant has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant. To this end, Member States shall ensure that precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR) and the European Asylum Support Office.

Amendment

2. In examining whether an applicant has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant. ***When that applicant is an unaccompanied minor, the availability of secure and concrete care and custodial arrangements, which are in the best interests of the unaccompanied minor, shall be part of the assessment under paragraph 1.*** To this end, Member States shall ensure that precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR) and

the European Asylum Support Office ***and is used. There shall be a strong presumption against the application of this paragraph where the State or agents of the State are the actors of persecution.***

Or. en

Justification

- i) When that applicant is an unaccompanied minor, the availability of secure and concrete care and custodial arrangements, which are in the best interests of the unaccompanied minor, must be part of the assessment under paragraph 1.*
- ii) Information gathered should also be used in the evaluation process. This adds to a more effective evaluation and reduces the possibility of legal challenge.*
- iii) This is in line with the Michigan Guidelines on the International Protection of Refugees which state that "there must be a reason to believe that the reach of the agent or author of persecution is likely to remain localised outside the designated place of internal relocation. There should therefore be a strong presumption against finding an 'internal protection alternative' where the agent or author of the original risk of persecution is, or is sponsored by, the national government".*

Amendment 11

Proposal for a directive

Article 10 – paragraph 1 – point d – indent 1

Text proposed by the Commission

– members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; ***and***

Amendment

– members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; ***or***

Or. en

Justification

In many EU member states and in international law it already suffices that one of the two requirements is met for the purposes of defining a particular social group. This practice should be enforced at the EU level to avoid protection gaps and increase coherence between Member State's asylum policies.

Amendment 12

Proposal for a directive

Article 10 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects should be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

Amendment

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, ***including gender identity***, should be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

Or. en

Amendment 13

Proposal for a directive

Article 23 – paragraph 5

Text proposed by the Commission

5. Member States ***may decide*** that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

Amendment

5. Member States ***shall consider*** that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

Or. en

Justification

This would align Member States practice.

Amendment 14

Proposal for a directive Article 31 – paragraph 5

Text proposed by the Commission

5. Member States shall establish procedures for tracing the members of the unaccompanied minor's family ***as soon as possible after the granting of*** international protection, whilst protecting the minor's best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.

Amendment

5. Member States shall establish procedures for tracing the members of the unaccompanied minor's family ***at the point of application for*** international protection, whilst protecting the minor's best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.

Or. en

Justification

Initiating family tracing programmes at the point of application, as proposed in the Commission's re-cast of the Reception Conditions Directive would be desirable and would ensure consistency between the two Directives.

EXPLANATORY STATEMENT

The proposal from the Commission is for the recast (partial amendment) of the original Directive 2004/83/EC. For the original proposal, the European Parliament was only consulted: now, following the entry into force of the Lisbon Treaty, the Parliament is in a position of co-decision. The existing Directive has two key elements: the **grounds on which someone qualifies** for refugee status or subsidiary protection and the **content** of that protection in terms of residence, employment and social rights within the Member State responsible for protection.

The Commission has brought forward **the recast proposal** (Directive COM (2009) 551 final 2) as a result of the required review of the earlier Directive and developing jurisprudence. It is also clear that there are considerable variations in practice between Member States in their implementation of the current Directive. This leads to wide variation in recognition rates overall and risks the continuation of secondary movements of applicants. While some of the disparities can be dealt with through improved co-operation, in which the new European Asylum Support Office should play an important role, there is a need for clarification in the legislative framework - the Directive itself - in order to provide a stronger, clearer framework for the implementation process.

Generally your Rapporteur welcomes the changes proposed by the Commission and will offer few amendments on this occasion.

An important proposed change is to approximate the two categories of protection more closely and thus to refer to *beneficiaries of international protection* (Article 1, 2b, 2j and others). This will act to remind implementing authorities that the two categories of protection are complementary: subsidiary protection is not of less importance for those in risk of serious harm if they return to their country of origin. The Commission's proposal also aims to approximate the entitlements within the content of protection more closely (Articles 22-27, 29, 30, 33, 34 and related recitals). The majority of Member States already make little difference between the two groups: only three restrict full access to the labour market for those with subsidiary protection; one differentiates on grounds of access to healthcare; eight limit the length of residence permit for this group, perhaps reflecting the view held by some that those in need of subsidiary protection will have only a short-term need, but this has not proved to be the case. Therefore, the Commission's proposals seem to be reflecting the positions taken by Member States.

Your Rapporteur has proposed a small number of amendments relating to gender and gender identity (recitals 15 and 29, Article 10.1d) in addition to the Commission's proposal on Article 10. While some Member States have good practice in this area, others are less willing to give this due weight.

Your Rapporteur has proposed an additional amendment to Article 10 d): the two conditions relating to groups should be alternative and cumulative. This is an important distinction in terms of assessing protection needs and should be clarified to bring it more into line with the terms of the Refugee Convention

Other amendments tabled by your Rapporteur relate to children: the best interest of the child

is developed in the Commission proposal on Recital 17. Your Rapporteur believes this should be further expanded to be more specific as to what this should entail and has also proposed an Article 2.1 to link to the recital and thus include this in the active text. The proposed amendment to Article 8.2 deals specifically with the care of unaccompanied minors. Continuity of care for such children is a strand that should be pursued throughout the CEAS, hence the proposed amendment to Article 31.5. Your Rapporteur would ask the Commission and Council to consider the necessary continuity, not least in relation to guardianship, of such children.

She would also welcome further clarification from Council and Commission as to how issues relating to customary practice might be best addressed when this leads to a clear threat to those who oppose such practices or are deemed to have transgressed them. Would this need legislative text to clarify the need to take this into account, or would clear guidelines be sufficient?

Proposals on the definition of family also have implications for children. Your Rapporteur welcomes the Commission proposals dealing with married minors, a small group but whose protection needs should not be made subordinate to their marital status. Many expert groups have made the point that families formed during flight or on arrival may not have their protection needs fully assessed and may face separation within the process. This can be seen as contrary to the right to family life.

Article 7 relates to Actors of Protection. There is a strongly held view that, in principle, only states can be viewed as actors of protection: international bodies do not have the attributes of a state and cannot be parties to international conventions. The Commission's proposed change to this Article aims to strengthen the requirements demanded of non-state actors if they are to be viewed as able to deliver effective and durable protection> Your Rapporteur has chosen to re-order the Article in order to make the conditions effective on state and non-state actors.

Article 8 concerns internal protection within the country-of-flight. Your Rapporteur has proposed retaining the original wording of paragraph 8.1 in addition to the Commission's proposal: it has been put to her that the concept of "reasonableness" here is important legally, as is the Commission's clarification. . Your Rapporteur is considering further relevant amendment to the Articles 11 and 16 dealing with Cessation

Even within the limited scope of a recast proposal, your Rapporteur regrets that significant legal issues relating to Articles 14 and 19 and the issue of non-refoulement as it relates to someone without humanitarian protection have not been addressed. Other issues relating to non-state actors of protection such as international bodies have not been addressed in principle. It is for this reason that your Rapporteur has included specific Articles within the review clause.

Overall, however, your Rapporteur recommends the Commission proposals to the Parliament; hopes that her own amendments will be seen as positive and awaits the Committee's response.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

COMMITTEE ON LEGAL AFFAIRS

CHAIRMAN

Ref.: D(2010)5206

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

Subject: *Proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted*
COM(2009) 551 final of 21.10.2009 - 2009/0164 (COD)

Dear Chairman,

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

Paragraph 3 of that Rule reads as follows:

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

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

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

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsperson, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal or in the opinion of the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

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

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

Yours faithfully,

Klaus-Heiner LEHNE

Encl.: Opinion of the Consultative Working Party.

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

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



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 23 November 2009

OPINION

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

Proposal for a European Parliament and Council directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted

(recast)

COM(2009)0551 of 21.10.2009 – 2009/0164(COD)

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

At that meeting¹, an examination of the proposal for a directive of the European Parliament and of the Council recasting 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 resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) In Article 9(3), the initial wording "*In accordance with Article 2 (c)*" should be adapted so as to read "*In accordance with Article 2 (d)*".

2) In Article 19(1), the words "*after the entry into force of this Directive*" should be adapted so as to read "*after the entry into force of Directive 2004/83/EC*".

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

- 3) In Article 23(2), the reference made to "*Articles 24 to 34*" should be adapted so as to read as a reference to "*Articles 24 to 27 and 29 to 35*".
- 4) In Article 39(1), first subparagraph, the final sentence "*They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive*" should have been identified by using the grey-shaded type generally used for marking substantive changes in recast texts.
- 5) In Article 39(2), the final words "*and a correlation table between those provisions and this Directive*" should have been identified with grey-shaded type.
- 6) In Article 42, the final words of Article 40 of Council Directive 2004/83/EC ("*in accordance with the Treaty establishing the European Community*") should be re-introduced.
- 7) In Annex I, Part B, the indication of the date of 10 October 2006 should be replaced by that of 9 October 2006.

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

C. PENNERA
Jurisconsult

J.-C. PIRIS
Jurisconsult

L. ROMERO REQUENA
Director General