EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

3.6.2005 PE 359.912v01-00

AMENDMENTS 112-192

Draft report **(PE 357.562v02-00)**
Wolfgang Kreissl-Dörfler
Proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

Proposal for a directive (Council) 14203/04 – C6-0200/2004 – 2000/0238(CNS))

Amendment by Giusto Catania

Amendment 112
Recital 1 a (new)

(1a) Every Member State should have a comprehensive national legal framework on asylum that respects at least the basic protection provided under international asylum law;

Or. en

Amendment by Carlos Coelho

Amendment 113
Recital 2

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the	(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the

Geneva Convention of 28 July 1951 relating to the status of refugees, as supplemented by the New York Protocol of 31 January 1967 ("Geneva Convention"), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to ***persecution***.	Geneva Convention of 28 July 1951 relating to the status of refugees, as supplemented by the New York Protocol of 31 January 1967 ("Geneva Convention"), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to ***countries or territories where their life or freedom could be at risk***.

Or. pt

Justification

It is necessary to stress the principle of non-refoulement, as the cornerstone of the Common European Asylum System.

Amendment by Luciana Sbarbati

Amendment 114
Recital 5

(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.	(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 ***in compliance with the international conventions and the Charter of Fundamental Rights, which guarantees applicants for asylum or persons in need of international protection fair, swift and simplified examination of their application and prevents the national authorities from forcibly repatriating them, if this would put their safety at risk.***

Or. it

Justification

The principle of non-refoulement should be stated explicitly. It is already sanctioned by the Geneva Convention and the conclusions of Tampere and should also be included in the text of this directive.

Amendment by Carlos Coelho

Amendment 115
Recital 11

(11) It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The organisation of the processing of applications for asylum is left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.	(11) It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum***, and there therefore need to be fast and efficient procedures which should not take longer than 6 months***. The organisation of the processing of applications for asylum is left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.

Or. pt

Justification

Fast and effective procedures are crucial. Given the enormous variations in time-periods between Member States, it is essential to establish a common average, since this will create fairer conditions for both asylum seekers and the Member States in terms of an equitable division of responsibilities.

Amendment by Luciana Sbarbati

Amendment 116
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***, pregnant women, victims of sexual violence and persons with disabilities*** should be laid down, because of their vulnerability. In this context, the best interests of the child***, the condition of pregnancy and physical or mental limitations require caution and*** should be a primary consideration of Member States.

Or. it

Justification

The Directive should not be confined to mentioning minors as the only persons at risk. Pregnant women or victims of sexual violence and persons with disabilities should have the same guarantees of treatment.

Amendment by Carlos Coelho

Amendment 117
Recital 18

(18) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.	(18) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established ***and it must be ensured that evaluation and implementation are carried out correctly and efficiently***.

Or. pt

Justification

Optimum results will only be achieved on the basis of proper implementation.

Amendment by Luciana Sbarbati

Amendment 118
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.	(20) ***The progress to be made by the*** candidate countries ***before their*** accession to the European Union ***is formalised should constitute a sufficient guarantee for them to*** be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union.

Or. it

Justification

The next accession countries, by virtue of the efforts they are making to incorporate the Community acquis, should be granted the status of 'safe country'. This definition should encourage them to make up any delays in their legislation and promote processes of democratisation and Europeanisation.

Amendment by Stavros Lambrinidis, Edith Mastenbroek, Wolfgang Kreissl-Dörfler, Martine Roure

Amendment 119
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,***	(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 ***it is established*** that another country ***is competent to*** do the examination ***and can*** provide ***equivalent and adequate*** protection ***in accordance with Council Regulation***

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.	***(EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*.***.
	_____
	**** OJ L 50, 25.02.2003, p. 1.***

Or. en

Amendment by Carlos Coelho

Amendment 120
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, 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 adopt decisions in this matter in codecision with the European Parliament***.

Or. pt

Justification

Pursuant to the EC Treaty (Article 67, paragraph 5, first indent), once the Council has adopted the legislation setting out the common rules and basic principles governing asylum, the procedure which should apply is codecision.

Amendment by Stavros Lambrinidis, Edith Mastenbroek, Wolfgang Kreissl-Dörfler, Martine Roure

Amendment 121
Recital 26

(26) With respect to the withdrawal of refugee status, Member States shall ensure that the persons benefiting from the refugee status are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status. ***However, these guarantees can be dispensed with where the reasons for the cessation of the refugee status is not related to a change of the conditions on which the recognition was based.***	(26) With respect to the withdrawal of refugee status, Member States shall ensure that the persons benefiting from the refugee status are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status.

Or. en

Amendment by Luciana Sbarbati

Amendment 122
Article 2, point (b)

b) "Application for asylum" means an application made by ***a third country national or stateless person which can be understood as a request for international protection from a Member State*** under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;	b) "Application for asylum" means an application made ***to a Member State*** by ***anyone who may be subject, if repatriated, to persecution on grounds of race, ethnic origin, political or religious belief, sexual orientation or social status,*** under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;

Or. it

Justification

It is a good idea to specify on the basis of the Geneva Convention, that the application may be submitted by anybody who may, on returning to their country of origin, be subject to persecution for reasons of race, ethnic origin, political or religious beliefs, sexual orientation, etc.

Amendment by Luciana Sbarbati

Amendment 123
Article 2, point (e)

e) "Determining authority" means any ***quasi-*** judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I;	e) "Determining authority" means any judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I;

Or. it

Justification

The determining authority is either competent to examine asylum applications or is not qualified to carry out this function and hence cannot carry it out. The term 'quasi-judicial' casts doubt on the legitimacy of the body itself.

Amendment by Luciana Sbarbati

Amendment 124
Article 2, point (g)

g) "Refugee Status" means the recognition by a Member State ***of a third country national or stateless person*** as a refugee;	g) "Refugee Status" means the recognition by a Member State of ***such status granted to the applicant***;

Or. it

Justification

In the same way as for the previous amendment it is stressed that the concept of 'refugee' covers anyone who meets the criteria laid down in the Geneva Convention. Any description or specification may be restrictive. Refugee status is the recognition given to the applicant by a Member State.

Amendment by Luciana Sbarbati

Amendment 125
Article 3A, paragraph 2, point (b)

b) taking a decision on the application in the light of national security provisions, provided a determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Council Directive 2004/83/EC;	b) taking a decision on the application in the light of national security provisions, ***whilst respecting the international conventions and the Charter of Fundamental Rights and Freedoms,*** provided a determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Council Directive 2004/83/EC;

Or. it

Justification

As explained earlier, the autonomy of a Member State as regards public order and internal security cannot be exercised without respect for the international conventions, the Charter of Fundamental Rights and respect for the personal freedoms of all persons

Amendment by Romano Maria La Russa

Amendment 126
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	3. Member States shall ensure that ***the determining authorities include, among their members, a representative of the Office of the UN High Commissioner for Refugees and,*** where authorities are designated in accordance with paragraph 2, the personnel of such authorities have the

Directive.	appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

Or. it

Justification

The presence of a United Nations representative within the authorities responsible for assessing asylum applications would ensure more objective judgement.

Amendment by Luciana Sbarbati

Amendment 127
Article 4

Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive.	Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive***, the international conventions and the Charter of Fundamental Rights and do not oblige the applicant to return to his country of origin, if this would expose him to personal risk***.

Or. it

Justification

As explained earlier, the autonomy of a Member State cannot be exercised without respect for the international conventions and the Charter of Fundamental Rights. As established in the Geneva Convention and reaffirmed at Tampere, the principle of non-refoulement must be upheld when a decision may prejudice the safety of a person seeking asylum or protection.

Amendment by Luciana Sbarbati

Amendment 128
Article 5, paragraph 1

1. Member States may require that	1. Member States may require that

applications for asylum be made in person and/or at a designated place.	applications for asylum be made in person and/or ***by the applicant's legal representative*** at a designated place.

Or. it

Justification

The Directive should make provision for the asylum applicant to submit the application in person and/or delegate a legal representative to do so.

Amendment by Luciana Sbarbati

Amendment 129
Article 5, paragraph 3 a (new)

	3 a. Applications submitted by unaccompanied minors and particularly vulnerable persons shall be examined as a matter of priority and in compliance with the relevant formal and material requirements.

Or. it

Justification

It seems useful to make explicit reference to unaccompanied minors and vulnerable persons whose applications require greater attention because of their circumstances.

Amendment by Carlos Coelho

Amendment 130
Article 5, paragraph 4, point (c)

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

Or. pt

Justification

The fact of an applicant who is a minor being married, which may happen very early under some countries' traditions, does not necessarily mean that minor does not require protection at international level.

Amendment by Luciana Sbarbati

Amendment 131
Article 5, paragraph 4, point (c a) (new)

	c a) cases in which the submission of an asylum application by an unaccompanied minor will lead to a further asylum application being submitted by a spouse who is also a minor.

Or. it

Justification

It seems useful to make explicit reference to unaccompanied minors married to other minors, both of whom may apply for asylum.

Amendment by Luciana Sbarbati

Amendment 132
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 ***in which they have submitted an asylum application under a temporary permit valid for no more than one month and bearing the words 'Dublin Convention 15.06.1990' until it is ascertained which Member State is competent to examine the application, which will issue the 'temporary residence permit' for asylum applicants, valid for three months and renewable until the procedure is completed.***

Or. it

Justification

The Dublin Convention lays down the conditions for determining the Member State competent to examine the asylum application and allows the asylum applicant to stay in the Member State competent to examine the application until the procedure is completed.

Amendment by Carlos Coelho

Amendment 133
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 decision in accordance with the procedures at first instance set out in Chapter III ***and a decision has been taken on an initial appeal lodged by the applicant***. This right to remain shall not constitute an entitlement to a residence permit.

Or. pt

Justification

The principle of effective appeal is a general principle of international law and is enshrined in Community law. This right must certainly be ensured, but it should not be invoked to encourage potentially lengthy postponements, given the highly diverse possibilities of appeal which in some cases exist in individual Member States' constitutional traditions.

Amendment by Luciana Sbarbati

Amendment 134
Article 8, paragraph 2, comma 1

2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and ***information*** on how to challenge a	2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and ***the applicant is notified of the decision***

negative decision ***is given in writing***.	in writing ***or is informed in a language he understands by the competent authorities, his lawyer or legal adviser, if necessary with the help of an interpreter, or in any other way considered appropriate, about*** how to challenge a negative decision.

Or. it

Justification

The applicant's right to be kept informed at all times and in all circumstances of the progress being made in the examination of an application for asylum should never be undermined. Above all, the applicant should be enabled to understand what is being decided about his/her case, so that he/she may have access in good time and under appropriate conditions to appeal procedures for the recognition of his/her rights.

Amendment by Carlos Coelho

Amendment 135
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 decisions on applications for asylum are given in writing***, in a language which the applicant understands***.

Or. pt

Justification

Asylum seekers must be informed in a language they understand. This is particularly important in cases of rejection, so that they may be made aware of the reasons in fact or in law for the decision and of their possibilities of appeal.

Amendment by Luciana Sbarbati

Amendment 136
Article 8, paragraph 2, comma 2

Member States need not state the reasons for	Member States need not state the reasons for

not granting the refugee status in the decision where the applicant is 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. In these cases, Member States shall ensure that the reasons for not granting the refugee status are stated in the applicant's file, and that the applicant has, upon request, access to his/her file.

not granting the refugee status in the decision where the applicant is 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. In these cases, Member States shall ensure that the reasons for not granting the refugee status are stated in the applicant's file, and that the applicant ***or his/her lawyer or legal representative*** has, upon request, access to his/her file.

Or. it

Justification

The applicant's right to be kept informed at all times and in all circumstances of the progress being made in the examination of an application for asylum should never be undermined. Above all, the applicant should be enabled to understand what is being decided about his/her case, so that he/she may have access in good time and under appropriate conditions to appeal procedures for the recognition of his/her rights.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek and Stavros Lambrinidis

Amendment 137
Article 9, paragraph 1, point a)

a) they must be informed in a language which they ***may reasonably be supposed*** to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not co-operating with the authorities. They must be informed about the time-frame, as well as the means at their disposal to fulfil the obligation to submit the elements as referred to in Article 4 of Council Directive 2004/83/EC. The information must be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 9A;

a) they must be informed in a language which they ***are known for certain*** to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not co-operating with the authorities. They must be informed about the time-frame, as well as the means at their disposal to fulfil the obligation to submit the elements as referred to in Article 4 of Council Directive 2004/83/EC. The information must be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 9A;

Or. fr

Justification

The existing wording is too vague: it must be established with certainty that those concerned understand all the information concerning their request.

Amendment by Carlos Coelho

Amendment 138
Article 9, paragraph 1, point (d)

d) they must be given notice ***in reasonable time*** of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;	d) they must be given notice***, within a time-limit which shall not exceed 6 months,*** of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

Or. pt

Justification

If the procedures are to be swift and efficient, a maximum time-limit for decision must be set, based on the Community average.

Amendment by Luciana Sbarbati

Amendment 139
Article 9A, paragraph 2, point (d)

(d) the competent authorities may ***search*** the applicant and the items he/she carries with him/her;	(d) the competent authorities may ***ascertain that*** the applicant ***does not constitute a danger*** and ***check*** the items he/she carries with him/her;

Or. it

Justification

Applicants for asylum should be treated as persons in need of help and it should not be assumed that they constitute a danger and hence are subject to prosecution. They are entitled to fair treatment and the appropriate safeguards.

Amendment by Luciana Sbarbati

Amendment 140
Article 10, paragraph 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 for asylum shall be given the opportunity of a personal interview***, if necessary in the presence of an interpreter and his/her lawyer or legal representative*** on his/her application for asylum with a person ***professionally appropriate, and qualified*** under national ***and international*** law ***governing the procedures concerning right of asylum and refugees,*** to conduct such an interview. ***In the case of minors or persons with physical or mental limitations and pregnant women or victims of sexual violence, specific procedural guarantees should be provided and, if necessary, specifically qualified professionals should be brought in.***

Or. it

Justification

The interview should be held in the presence of qualified and appropriate personnel. Knowledge of national legislation is not sufficient to safeguard applicants for asylum, who are mainly protected by international conventions. They often require psychological support and need formal legal advice. Thus only the specific qualities of the persons assisting in the interview can help to provide elements useful for the successful outcome of the application.

Amendment by Edith Mastenbroek, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Martine Roure

Amendment 141
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)***.***	The dependants referred to in Article 5(3) ***shall also have the right to a personal interview.***

Or. en

Justification

Acknowledgement of cases where the applicant is not familiar with all the relevant activities or events relating to the dependent, for example in case the wife did not tell her husband about sexual abuse by government authorities or other actors out of shame and/or fear. Here, the wife has the right to be heard separately and have her own personal interview.

Amendment by Luciana Sbarbati

Amendment 142
Article 11, paragraph 2

2. A personal interview must take place under conditions which ensure ***appropriate*** confidentiality.	2. A personal interview must take place under conditions which ensure ***due*** confidentiality ***and appropriate guarantees of formal correctness***.

Or. it

Justification

The interview should ensure appropriate guarantees of formal correctness as well as due confidentiality.

Amendment by Luciana Sbarbati

Amendment 143
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 ***has appropriate professional competence and the ability to make a fair and accurate assessment*** 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

Or. it

Justification

The person who conducts the interview with the applicant for asylum needs to have the right professional qualifications and abilities to enable him to make accurate assessments that do not damage the applicant's interests.

Amendment by Edith Mastenbroek, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Martine Roure

Amendment 144
Article 12, paragraph 1

1. Member States shall ensure that a written report is made of every personal interview, containing ***at least*** the ***essential*** information regarding the application, as presented by the applicant, in terms of Article 4(2) of Council Directive 2004/83/EC.	1. Member States shall ensure that a written report is made of every personal interview, containing the information regarding the application as presented by the applicant, in terms of Article 4(2) of Council Directive 2004/83/EC.

Or. en

Justification

The Council proposal states that the report does not have to be a transcript of what has been said (as proposed by the Commission in 2002). The interview, however, is the main fact-finding possibility. The failure to fully record the personal interview is condemned by the ECtHR in Chahal case.

Amendment by Luciana Sbarbati

Amendment 145
Article 12, paragraph 2

2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that ***access is possible as soon as necessary for allowing*** an appeal ***to be*** prepared and lodged in due time.	2. Member States shall ensure that applicants have timely access to the report of the personal interview ***in a language they understand or in another form considered appropriate***. Where access is only granted after the decision of the determining authority, Member States shall ensure that ***delayed availability of the report does not prevent*** an appeal ***from being*** prepared and

lodged in due time.

Or. it

Justification

The report should be accessible, if possible in a language that applicant understands, but, above all, the timing of its being made available should not prevent an appeal from being lodged.

Amendment by Luciana Sbarbati

Amendment 146
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. ***The*** report of the personal interview ***(in a language he or she understands or in another form considered appropriate) shall be submitted for the*** applicant's approval.

Or. it

Justification

The applicant for asylum to whom the report of the personal interview is submitted for his/her approval must be able to decide not to sign it if the contents turn out to contain discrepancies as regards the applicant's position. This decision shall not prevent the competent authorities from examining the application and issuing a fair and formally exceptionable judgement.

Amendment by Carlos Coelho

Amendment 147
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 ***shall*** request the applicant's approval on the contents of the report of the personal interview.

Or. pt

Justification

It is essential to require the applicant's approval of the contents of the report, in order to avoid misunderstandings and facilitate the clarification of contradictions.

Amendment by Luciana Sbarbati

Amendment 148
Article 13, paragraph 5

5. Moreover, Member States may	***deleted***
(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.	
(b) provide that, as regards fees and other costs, the treatment shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.	

Or. it

Justification

Amendment 36 says that applicants for asylum are entitled to free legal assistance in the same way as Member State nationals without financial means. Thus there is no justification for maintaining this paragraph or the previous one.

Amendment by Giusto Catania

Amendment 149
Article 14, paragraph 2

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order ***or administrative management of the area or to ensure an efficient examination of the application***, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.	2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has ***full*** access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible ***and in any case fully respecting the letter and case-law of the European Convention on Human Rights and Fundamental Freedoms***.

Or. en

Amendment by Luciana Sbarbati

Amendment 150
Article 14, paragraph 2

2. ***Member States shall ensure that t***he legal adviser or other counsellor who assists or represents an applicant for asylum ***has*** access to closed areas, such as detention facilities and transit zones, for the purpose of consulting ***that applicant***. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area ***or to ensure an efficient*** examination of the application, ***provided that access by*** the legal adviser or other counsellor ***is not thereby severely limited or rendered*** impossible.	2. ***T***he legal adviser or other counsellor who assists or represents an applicant for asylum ***shall be allowed*** access to closed areas, such as detention facilities and transit zones, for the purpose of consulting ***his client***. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area ***and does not interfere with a fair and rapid*** examination of the application, ***unless the restrictions imposed interfere with the work of*** the legal adviser or other counsellor ***or even makes access*** impossible.

Or. it

Justification

The applicant's lawyer or legal adviser must be allowed access to places in which his client finds himself and this right, provided that it is not in conflict with the public order and security requirements of the Member State in which the applicant is located, should not be restricted.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek and Stavros Lambrinidis

Amendment 151
Article 14, paragraph 2

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for ***the security, public order or administrative management of the area or to ensure an efficient examination of the application***, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.	2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for ***security or public order***, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

Or. fr

Justification

Administrative management is not a sufficient reason for denying legal advisers access to asylum seekers.

Amendment by Luciana Sbarbati

Amendment 152
Article 14, paragraph 3

3. ***Member States may provide rules covering t***he presence of legal advisers or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article 15(1)(b).	3. ***T***he presence of legal advisers or other counsellors ***should be guaranteed at the personal interview and*** at all interviews in the procedure, without prejudice to this Article or to Article 15(1)(b).

Or. it

Justification

The applicant's lawyer or legal adviser must be allowed to take part in not only the personal interview, but also all other interviews envisaged in the procedure.

Amendment by Luciana Sbarbati

Amendment 153
Article 14, paragraph 4, subparagraph 1

4. Member States may provide that the applicant is allowed to bring with him/her to the personal interview the legal adviser or other counsellor, admitted as such under national law.	***deleted***

Or. it

Justification

The applicant's lawyer or legal adviser must be allowed to take part in not only the personal interview, but also all other interviews envisaged in the procedure, as stated in the previous amendment, and so this paragraph can be considered to have been superseded.

Amendment by Luciana Sbarbati

Amendment 154
Article 15, paragraph 1, point (b)

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal	(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal

interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, ***within the framework set by the person who conducts the interview.***	interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, ***and, if necessary, discuss with the minor the need to continue with the procedure or suggest possible alternative solutions.***

Or. it

Justification

The applicant's lawyer or legal adviser must be able to interact unrestrictedly with his client and advise him/her if he considers there are feasible alternative solutions for settling the case positively.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek, Stavros Lambrinidis, Lapo Pistelli

Amendment 155
Article 15, paragraph 2, point (a)

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

Or. en

Justification

This paragraph is discriminatory to 17 years olds and not acceptable according to Member States' obligations to treat all young people under 18 as children, as defined by the Convention on the Rights of the Child.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek, Stavros Lambrinidis, Lapo Pistelli

Amendment 156
Article 15, paragraph 3

3. Member States may, in accordance with laws and regulations in force at the time of the adoption of this Directive, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.	***deleted***

Or. en

Justification

There is no justification in withholding representation from young people aged 16. In accordance with the Convention on the Rights of the Child any person under 18 should be considered as a child. Therefore any unaccompanied child under 18 should be entitled to representation.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek, Stavros Lambrinidis

Amendment 157
Article 17

Detention	Detention
1. Member States shall not hold ***a person*** in detention ***for the sole reason that he/she is an applicant for asylum.***	1. ***In principle,*** Member States shall not hold ***asylum seekers*** in detention***. Alternatives to detention and non-custodial measures must always be considered before resorting to detention.***
2. Where an applicant for asylum is held in detention, Member States shall ensure that there is the possibility of speedy judicial review.	***2. No asylum seeker may be detained unless it has been established that the detention is necessary, lawful and justified on one of the grounds recognised as legitimate by international standards. Asylum seekers may only be detained in facilities clearly separated from prisons.***
	3. In all cases, detention shall not last longer than is strictly necessary. Maximum time limits, which should be as short as possible, must be laid down by law.
	4. Access to an effective legal assistance, access to the services of competent,

qualified and impartial interpreters and access to qualified medical personnel shall be systematically granted.

5. Persons deprived of their liberty shall be given adequate opportunity to have their detention reviewed as to both its legality and its necessity, by means of a prompt, fair, individual hearing before a judicial or other similar authority whose status and tenure afford the strongest possible guaranties of competence, impartiality and independence.

6. Unaccompanied children shall never be detained on the ground of their immigration status. Alternative measures must be actively considered in the case of persons belonging to vulnerable categories, such as unaccompanied elderly person, torture or trauma victims, and persons with a mental or a physical disability. As a general rule, the detention of pregnant women in their final months and nursing mothers shall be avoided

Or. en

Justification

The Rapporteurs consider, in line with several NGOs, including Amnesty International, that although the draft article 17 reiterates the general principle that asylum seekers should not be detained for the sole reason that he/she is an applicant for asylum, the wording of this article is too vague and leaves too wide margin of discretionary power to the Member States. The wording of the new article 17 complies with international obligations.

Amendment by Giusto Catania

Amendment 158
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 ***or in a closed holding centre*** for the reason that he/she is an applicant for asylum.

Or. en

Amendment by Luciana Sbarbati

Amendment 159
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.	Member States shall ensure that ***vulnerable persons (minors, persons with disabilities, pregnant women or victims of sexual violence) are not detained. If these measures – confined to a small number of exceptional cases, in which they are unavoidable, it is necessary to guarantee respect for the international conventions and the Charter of Fundamental Rights, and ensure that*** speedy judicial review ***is launched***

Or. it

Justification

Under the international conventions the detention of an applicant for asylum constitutes an infringement. If detention is confined to a few exceptional cases and excludes the protected categories, it may be tolerated.

Amendment by Carlos Coelho

Amendment 160
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, Member States shall ensure***:***
	a) that the applicant is immediately

informed of the reasons for his detention and the procedure he should follow, in a language that he understands;
b) that he has access to legal, medical and social assistance;
c) that he is entitled to be visited by his lawyer or representative, his relatives and representatives of ACNU or other NGOs;
d) that there is the possibility of speedy judicial review.

Or. pt

Justification

These provisions are included on humanitarian grounds.

Amendment by Carlos Coelho

Amendment 161
Article 17, paragraph 2a (new)

2a. The period of detention shall not exceed 6 months.

Or. pt

Justification

The procedures must be swift and efficient. For humanitarian reasons, it is not acceptable for asylum applicants to be deprived of their liberty in this way for longer than is strictly necessary, taking account of the Community average.

Amendment by Carlos Coelho

Amendment 162
Article 17, paragraph 2b (new)

2b. Where an applicant for asylum is kept in detention, the Member States shall ensure differentiated treatment, in terms of conditions and place of detention, vis-à-vis

that applying to all other categories of detained persons.

Or. pt

Justification

Asylum seekers must not be held alongside other categories of detained person such as criminals.

Amendment by Carlos Coelho

Amendment 163
Article 17, paragraph 2c (new)

2c. Consideration must be in all cases given prior to detention to possible alternatives for applicants for asylum who are particularly vulnerable, such as children, old people, victims of torture or sexual violence, persons who have suffered traumas and persons with mental or physical disabilities.

Or. pt

Justification

Particular attention must be paid to those asylum seekers who are especially vulnerable.

Amendment by Luciana Sbarbati

Amendment 164
Article 19, paragraph 1

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

Or. it

Justification

Withdrawal of an application for asylum should not necessarily mean that the outcome is negative.

Amendment by Luciana Sbarbati

Amendment 165
Article 19, paragraph 2

2. Member States may also decide that the ***determining*** authority ***can decide to discontinue the examination without taking*** a decision***. In this case, Member States shall ensure that the determining authority shall*** enter a notice in the applicant's file.	2. Member States may also decide that the authority ***that has suspended the*** examination ***of*** a decision ***may give instructions to*** enter a notice in the applicant's file.

Or. it

Justification

Withdrawal of an application for asylum should not necessarily mean that the outcome is negative. However, notification of suspension of the procedure is an element that may help to clarify the situation in the applicant's file.

Amendment by Edith Mastenbroek, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Martine Roure

Amendment 166
Article 20, paragraph 1, subparagraph 1

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision ***either*** to discontinue the examination ***or to reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Council Directive 2004/83/EC***.	1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision to discontinue the examination ***and to consequently close the file on the applicant.***

Or. en

Justification

A claim may be implicitly withdrawn for a variety of reasons which are not necessarily related to a lack of protection needs. A rejection of a claim in such circumstances carries the risk that existing protection needs are not examined and recognized. Rejections are particularly problematic in cases where applicants are sent back to another country (Dublin II Regulation) where meanwhile the previously made application has been rejected, deadlines for appeals are missed and reopening almost impossible.

Amendment by Luciana Sbarbati

Amendment 167
Article 20, paragraph 1, subparagraph 1

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision either to discontinue the examination ***or to reject*** the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Council Directive 2004/83/EC.	1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision either to discontinue the examination ***of*** the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Council Directive 2004/83/EC.

Or. it

Justification

Withdrawal of an application for asylum should not necessarily mean that the outcome is negative. As was already stated in Amendment 46 and for the sake of consistency the concept is repeated in this amendment, although there are no specific cases of this.

Amendment by Luciana Sbarbati

Amendment 168
Article 20, paragraph 1, subparagraph 2

Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application for asylum in	Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application for asylum

particular when it is ascertained that:	***and hence reject it,*** in particular when it is ascertained that:

Or. it

Justification

Withdrawal of an application for asylum should not necessarily mean that the outcome is negative. As was already stated in Amendment 46 and for the sake of consistency the concept is repeated in this amendment, although there are no specific cases of this.

Amendment by Luciana Sbarbati

Amendment 169
Article 20, paragraph 2, subparagraph 1

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 is taken, is entitled to request that his/her case be re-opened, unless the request is examined in accordance with Articles 33 and 34.	2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 is taken, is entitled to request that his/her case be re-opened, unless the request is examined in accordance with Articles 33 and 34 ***or is rejected on the basis of paragraph 1, subparagraph 2, letters a) and b).***

Or. it

Justification

The right to re-examination is possible unless the applicant has not voluntarily disappeared, fled or failed to reply within the deadlines set at the request of the authority competent to examine the application.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek and Stavros Lambrinidis

Amendment 170
Article 22, point a)

a) ***directly*** disclose the information	a) disclose the information regarding

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.	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.

Or. fr

Justification

Conditions that are too random could put asylum seekers at risk.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek and Stavros Lambrinidis

Amendment 171
Article 22, point b)

b) obtain any information from the alleged actor(s) of persecution ***in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin***.	b) obtain any information from the alleged actor(s) of persecution.

Or. fr

Justification

Conditions that are too random could put asylum seekers at risk.

Amendment by Carlos Coelho

Amendment 172
Article 23, paragraph 2

2. Member States shall ensure that such a procedure is concluded as soon as possible,	2. Member States shall ensure that such a procedure is concluded as soon as possible

without prejudice to an adequate and complete examination.	***and within no later than 6 months***, without prejudice to an adequate and complete examination.

Or. pt

Justification

Fast and effective procedures are crucial. Given the enormous variations in time-periods between Member States, it is essential to establish a common average, since this will create fairer conditions for both asylum seekers and the Member States in terms of an equitable division of responsibilities.

Amendment by Carlos Coelho

Amendment 173
Article 23, paragraph 2, point (b)

b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. ***Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time frame***.	b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected***, which shall not exceed 3 months***.

Or. pt

Justification

Fast and effective procedures are crucial. Given the enormous variations in time-periods between Member States, it is essential to establish a common average, since this will create fairer conditions for both asylum seekers and the Member States in terms of an equitable division of responsibilities.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek, Stavros Lambrinidis

Amendment 174
Article 23, paragraph 4, part 1

4. Moreover, Member States may lay down that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated if:	4. Moreover, Member States may lay down that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated***, only at second instance, following a full and individual examination at first instance, where the claim has been determined to be clearly fraudulent or has been found not to rely on any criteria for granting asylum under the Geneva Convention or subsidiary protection in accordance with Council Directive 2004/83/EC and*** if:

Or. en

Justification

The directive permits prioritarisation or acceleration of a very wide range of cases. In line with UNHCR the Rapporteur considers that the scope should be narrowed to manifestly unfounded cases and only in second instance.

Amendment by Jean Lambert

Amendment 175
Article 23, paragraph 4, point (c)

(c) the application for asylum is considered to be unfounded	***deleted***
- because the applicant is from a safe country of origin within the meaning of Articles 30 and 30B of this directive or	
- because the country which is not a Member State is considered to be safe third country for the applicant, without prejudice to Article 29(1); or	

Or. en

Justification

The Amendments tabled by the rapporteur address many of the problems associated with the safe countries of origin notion in the draft directive. Nevertheless, the designation of

countries as safe is both legally problematic and, practically, of little real use.

Amendment by Wolfgang Kreissl-Dörfler, Martine Roure, Edith Mastenbroek, Stavros Lambrinidis

Amendment 176
Article 23, paragraph 4, point (m)

(m) the applicant is a danger to the national security or the public order of the Member State; or the applicant has enforceably been expelled for serious reasons of public security and public order under national law; or	***deleted***

Or. en

Justification

The Rapporteur, in line with UNHCR and Amnesty international, considers that a person can not be excluded from the benefit of the Geneva Convention on the basis of his criminal behaviour in his host country. Considering that this type of asylum application may raise very delicate questions, the Rapporteur believes that the accelerated procedure is not the appropriate framework to deal with such claims.

Amendment by Carlos Coelho

Amendment 177
Article 23, paragraph 4, point (o)

o) the application was made by ***an unmarried*** minor to whom Article 5(4)(c) applies after the application of the parents or parent responsible for the minor has been rejected by a decision and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.	o) the application was made by ***a*** minor to whom Article 5(4)(c) applies after the application of the parents or parent responsible for the minor has been rejected by a decision and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

Or. pt

Justification

The fact of an applicant who is a minor being married, which may happen very early under some countries' traditions, is no reason to justify such a person being treated differently from other minors.

Amendment by Romano Maria La Russa

Amendment 178
Article 25, paragraph 2, point (f a) (new)

f a) The applicant, when about to be expelled from the territory in which he or she is residing illegally, appeals to be given the possibility of enjoying right of asylum.

Or. it

Justification

To prevent illegal immigrants who have been identified as such from declaring that they are being persecuted for political or other reasons and thus abusing the right of asylum.

Amendment by Jean Lambert

Amendment 179
Article 30

Minimum common list of third countries as safe countries of origin	***deleted***
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.	
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.

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.

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.

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.

6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.

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.

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.

Or. en

Justification

The assessment of risk in the country of origin should always be conducted on an individual basis rather than on a general presumption on country-related criteria. When individuals are required to rebut such presumptions of safety in an accelerated procedure that lacks essential safeguards (such as the right to a suspensive appeal), there is a real risk of refoulment, in breach of international law.

Amendment by Jean Lambert

Amendment 180
Article 30A

National designation of third countries as safe countries of origin	***deleted***
1. Without prejudice to Article 30, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purpose of examining applications for asylum. This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that 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:

(a) persecution as defined in Article 9 of Council Directive 2004/83/EC; nor

(b) torture or inhuman or degrading treatment or punishment.

3. Member States may also retain legislation in force at the time of the adoption of this Directive that allows for the national designation of part of a country as safe or a country or part of a country as safe for a specified group of persons in that country where the conditions in paragraph 2 are fulfilled in relation to that part or group.

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

5. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations.

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

Or. en

Justification

The assessment of risk in the country of origin should always be conducted on an individual basis rather than on a general presumption on country-related criteria. When individuals are required to rebut such presumptions of safety in an accelerated procedure that lacks essential safeguards (such as the right to a suspensive appeal), there is a real risk of refoulment, in breach of international law.

Amendment by Jean Lambert

Amendment 181
Article 30B

Application of the safe country of origin concept	***deleted***
1. A third country designated as a safe country of origin either in accordance with the provisions of Article 30 or 30A can, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:	
(a) he/she has the nationality of that country or,	
(b) he/she is a stateless person and was formerly habitually resident in that country;	
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.	
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.	
3. Member States shall lay down in national legislation further rules and modalities for the application of the safe	

country of origin concept.

Or. en

Justification

The assessment of risk in the country of origin should always be conducted on an individual basis rather than on a general presumption on country-related criteria. When individuals are required to rebut such presumptions of safety in an accelerated procedure that lacks essential safeguards (such as the right to a suspensive appeal), there is a real risk of refoulment, in breach of international law.

Amendment by Luciana Sbarbati

Amendment 182
Article 35, paragraph 1

1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide, at the border or transit zones of the Member State, on the applications made at such locations.	1. Member States may provide for procedures, ***in compliance with the international conventions and*** in accordance with the basic principles and guarantees of Chapter II, in order to decide, at the border or transit zones of the Member State, on the applications made at such locations.

Or. it

Justification

Taking into account all the possible forms of protection for applicants for asylum, only in the event of threats to national security and public order may a Member State decide not to allow an applicant for asylum to enter its territory.

Amendment by Luciana Sbarbati

Amendment 183
Article 35, paragraph 2

2. However, when procedures as set out in paragraph 1 do not exist, Member States	2. However, when procedures as set out in paragraph 1 do not exist, Member States

may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force at the time of the adoption of this Directive, ***procedures derogating from the basic principles and guarantees described in Chapter II, in order*** to decide, at the border or in transit zones, on the permission to enter their territory of applicants for asylum who have arrived and made an application for asylum at such locations.

may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force at the time of the adoption of this Directive, ***subject to prior examination of the application by the competent authorities or if it is ascertained that the applicant presents elements of danger for national security or public order,*** to decide, at the border or in transit zones, on the permission to enter their territory of applicants for asylum who have arrived and made an application for asylum at such locations.

Or. it

Justification

Taking into account all the possible forms of protection for applicants for asylum, only in the event of threats to national security and public order may a Member State decide not to allow an applicant for asylum to enter its territory.

Amendment by Luciana Sbarbati

Amendment 184
Article 35A, paragraph 1

1. ***Member States may provide that no, or no full,*** examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II ***takes place in cases where a competent authority has established,*** on the basis of the facts, that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

1. ***E***xamination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II***, on the basis of the outcome of the examination of the application for asylum by the competent authority of a Member State and*** on the basis of the facts, ***may lead to the conclusion*** that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

Or. it

Justification

Examination must always be carried out, otherwise there is the risk that decisions might be taken not in accordance with the law, but at the discretion of the Member State.

Amendment by Luciana Sbarbati

Amendment 185
Article 35A, paragraph 2, point (d a) (new)

d a) it implements the principle of non-refoulement

Or. it

Justification

The characteristics a third country must have in order to be considered as a safe country include implementation of the principle of non-refoulement. The directive should provide that, for humanitarian and political reasons and on the basis of international law, it is possible that this article may not be applied.

Amendment by Carlos Coelho

Amendment 186
Article 35A, paragraph 3

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

Or. pt

Justification

Pursuant to the EC Treaty (Article 67, paragraph 5, first indent), once the Council has

adopted the legislation setting out the common rules and basic principles governing asylum, the procedure which should apply is codecision.

Amendment by Luciana Sbarbati

Amendment 187
Article 35A, paragraph 4

4. ***Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement under*** the Geneva Convention ***including providing for exceptions from the application of*** this Article for humanitarian or political reasons or for reasons of public international law.	4. ***U***nder the Geneva Convention this Article ***shall not be applied*** for humanitarian or political reasons or for reasons of public international law.

Or. it

Justification

The characteristics a third country must have in order to be considered as a safe country include implementation of the principle of non-refoulement. The directive should provide that, for humanitarian and political reasons and on the basis of international law, it is possible not to apply this article.

Amendment by Carlos Coelho

Amendment 188
Article 35A, paragraph 7

7. Member States which have designated third countries as safe countries in accordance with national legislation in force at the date of the adoption of this Directive and on the basis of the criteria in paragraph 2(a) to (c), may apply paragraph 1 to these third countries until such time as the Council ***has*** adopted the common list pursuant to paragraph 3.	7. Member States which have designated third countries as safe countries in accordance with national legislation in force at the date of the adoption of this Directive and on the basis of the criteria in paragraph 2(a) to (c), may apply paragraph 1 to these third countries until such time as the Council ***and the European Parliament have*** adopted the common list pursuant to

paragraph 3.

Or. pt

Justification

Pursuant to the EC Treaty (Article 67, paragraph 5, first indent), once the Council has adopted the legislation setting out the common rules and basic principles governing asylum, the procedure which should apply is codecision.

Amendment by Edith Mastenbroek, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Martine Roure

Amendment 189
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 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 ***for either cessation, revocation, cancellation or otherwise ending*** the validity of his/her refugee status.

Or. en

Justification

this wording is more in line with the provisions of the Refugee Convention which sets out the circumstances in which refugee protection does no longer apply.

Amendment by Luciana Sbarbati

Amendment 190
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	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 ***and the international conventions***, 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.	the applicant in maintaining the proceedings.

Or. it

Justification

For the sake of uniformity and consistency with the previous amendments, reference to the international conventions is also made here. Paragraph 6 is deleted in view of the need not to allow each individual Member State to make derogations from the minimum rules laid down in this Directive.

Amendment by Luciana Sbarbati

Amendment 191
Article 38, paragraph 6

6. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.	***deleted***

Or. it

Justification

For the sake of uniformity and consistency with the previous amendments, reference to the international conventions is also made here. Paragraph 6 is deleted in view of the need not to allow each individual Member State to make derogations from the minimum rules laid down in this Directive.

Amendment by Jean Lambert

Amendment 192
Annex B to Annex 1

Designation of safe countries of origin FOR THE PURPOSES OF ARTICLES 30 AND 30A(1)	***deleted***

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.

In making this assessment, account shall be taken inter alia of the extent to which protection is provided against persecution or mistreatment through:

(a) the relevant laws and regulations of the country and the manner in which they are applied;

(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect of the non-refoulement principle according to the Geneva Convention;

(d) provision for a system of effective remedies against violations of these rights and freedoms.

Or. en

Justification

From a practical point of view, if countries are in fact safe, efficient refugee determination processes will quickly weed out erroneous applications by nationals of those countries; there should be no need for a safe country list