# EUROPEAN PARLIAMENT

*2004* *2009*

*Committee on Civil Liberties, Justice and Home Affairs*

PROVISIONAL
**2000/0238(CNS)**

11.5.2005

*

# DRAFT REPORT

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

(Renewed consultation)

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Wolfgang Kreissl-Dörfler

### *Symbols for procedures*

| | |
|---|---|
| * | Consultation procedure<br>*majority of the votes cast* |
| **I | Cooperation procedure (first reading)<br>*majority of the votes cast* |
| **II | Cooperation procedure (second reading)<br>*majority of the votes cast, to approve the common position*<br>*majority of Parliament's component Members, to reject or amend the common position* |
| *** | Assent procedure<br>*majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty* |
| ***I | Codecision procedure (first reading)<br>*majority of the votes cast* |
| ***II | Codecision procedure (second reading)<br>*majority of the votes cast, to approve the common position*<br>*majority of Parliament's component Members, to reject or amend the common position* |
| ***III | Codecision procedure (third reading)<br>*majority of the votes cast, to approve the joint text* |

(The type of procedure depends on the legal basis proposed by the Commission)

### *Amendments to a legislative text*

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status**
**(14203/04 – C6-0200/2004 – 2000/0238(CNS))**

**(Consultation procedure - renewed consultation)**

*The European Parliament*,

– having regard to the Council draft (14203/2004)[1] and

– having regard to the amended Commission proposal to the Council (COM(2002)0326)[2],

– having regard to its position of 20 September 2001[3],

– having regard to Article 63, paragraph 1, point (1) (d) of the EC Treaty,

– having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0200/2004),

– having regard to Rules 51, 41(4) and 55(3) of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Legal Affairs (A6-0000/2005),

1. Approves the Council proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Instructs its President to forward its position to the Council and Commission.

| Text proposed by the Council | Amendments by Parliament |
|---|---|
| | Amendment 1<br>Recital 3 a (new) |
| | ***(3a) The European Council, at its meeting in Den Haag on 4 and 5 November 2004, confirmed the approach adopted in Tampere and agreed on the establishment*** |

[1] OJ C ... / Not yet published in OJ.
[2] OJ C 291E, 26.11.2002, p. 143.
[3] OJ C 77, 28.3.2002, p. 20.

| | |
|---|---|
| | ***of a common asylum procedure and uniform status for those who are granted asylum or subsidiary protection, by 2010.*** |

*Justification*

*It is important to mention the Den Haag Programme, which is the follow up of Tampere.*

Amendment 2
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, ***ensuring that no Member State expels or returns an applicant for asylum in any manner whatsoever to the frontier of territories where his life or freedom would be threatened on account of his race, sex, religion, nationality, language, sexual orientation, membership of a particular social group or political opinion or minority.*** |

*Justification*

*The non - refoulement principle is the cornerstone of the Geneva Convention and of the Tampere conclusions on asylum and should be mentioned explicitly in the text from the beginning as a general rule.*

Amendment 3
Recital 8

| | |
|---|---|
| (8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. | (8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, ***as general principles of Community law, and by all the existing international obligations, in particular the*** |

***Geneva Convention***.

*Justification*

*The necessity to respect all existing international law, the Charter and the general principles of Community law needs to be underscored and to be applied to the entire Directive.*

Amendment 4
Recital 13

| | |
|---|---|
| (13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, ***subject to certain exceptions,*** have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and ***sufficient*** procedural guarantees to pursue his/her case at and throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should ***normally*** provide an applicant at least with a right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she ***can reasonably be supposed to understand***. | (13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and procedural guarantees to pursue his/her case at and throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should provide an applicant at least with a right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she ***understands***.<br><br>*(The deletion of "can reasonably be supposed to" applies throughout the text. Adopting this amendment will necessitate* |

*corresponding changes throughout.)*

*Justification*

*The principles of effective remedy should always apply. Asylum seekers should be informed in a language that they understand, not in a language they may reasonably be supposed to understand.*

Amendment 5
Recital 14

| | |
|---|---|
| (14) In addition, specific procedural guarantees for unaccompanied ***minors*** should be laid down, because of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States. | (14) In addition, specific procedural guarantees for unaccompanied ***children*** 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.<br>*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)* |

*Justification*

*It is better to use the term "child" instead of "minor", in line with the terminology of the Convention on the Rights of the Child.*

Amendment 6
Recital 16

| | |
|---|---|
| (16) Many asylum applications are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to keep existing procedures adapted to the specific situation of these applicants at the border. ***Common rules should be defined on possible exceptions made in these circumstances to the guarantees normally enjoyed by applicants***. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States. | (16) Many asylum applications are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to keep existing procedures adapted to the specific situation of these applicants at the border. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States. |

*Justification*

*The principle of non-discrimination requires that all asylum-seeker, irrespective of whether they apply at the border or inside the country, benefit from the same basic principles and guarantees. Here is no reason for requirements of due process of law in asylum cases submitted at the border to be less than for those submitted within the territory.*

Amendment 7
Recital 19

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

*Justification*

*The Rapporteur considers that the Member States who have not a list on safe countries should not be obliged to adopt it. Moreover the common list at European level should be the only list allowed, not a minimum one allowing Member States to have national lists. The list, which will be established not by this Directive, but by a further legislative act, shall be agreed in co-decision by the Council and the European Parliament. In fact, according to the EC Treaty (article 67-§5, first indent), once the Council has adopted the legislation defining the common rules and basic principles on asylum, the procedure to apply is the co-decision one.*

Amendment 8
Recital 20

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

*Justification*

*It is premature to consider Romania and Bulgaria safe country of origin. Despite the adoption of asylum provisions, there are still shortcomings in the legislation and in the implementation.*

Amendment 9
Recital 22

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

*Justification*

*The term "sufficient" appears to indicate a lower degree of protection and should be replaced*

*by effective.*

Amendment 10
Recital 24

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| ***(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.*** | ***deleted*** |

*Justification*

*See justification to Am 35 A.*

Amendment 11
Recital 25

| | |
|---|---|
| (25) It follows from the nature of the common standards concerning ***both*** safe third country ***concepts*** as set out in this Directive, that the practical effect of the ***concepts*** depends on whether the third country in question permits the applicant in question to enter its territory. | (25) It follows from the nature of the common standards concerning ***the*** safe third country ***concept*** as set out in this Directive, that the practical effect of the ***concept*** depends on whether the third country in question permits the applicant in question to enter its territory. |

*Justification*

*The only concept accepted by the Rapporteur is the safe country of origin, not the "super safe".*

Amendment 12
Recital 27

| | |
|---|---|
| (27) It reflects a basic principle of Community law that the decisions taken on an application for asylum and on the withdrawal of a refugee status must be subject to an effective remedy before a court or tribunal in the meaning of Article 234 of the Treaty establishing the European Community. ***The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.*** | (27) It reflects a basic principle of Community law that the decisions taken on an application for asylum and on the withdrawal of a refugee status must be subject to an effective remedy before a court or tribunal in the meaning of Article 234 of the Treaty establishing the European Community. ***Decisions taken on an application for asylum should be subject to an appeal consisting of an examination on both facts and points of law by a court of law. The applicant should be entitled not to be expelled until a court has ruled on the right to remain pending the outcome of this appeal.*** |

*Justification*

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

Amendment 13
Recital 28

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| ***(28) In accordance with Article 64 of the Treaty establishing the European Community, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.*** | ***deleted*** |

*Justification*

*This recital has nothing to do with the Directive.*

Amendment 14
Recital 29 a (new)

***(29a) Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[1] shall apply to personal data treated in application of this directive. Directive 95/46/EC shall also apply to the transmission of data from Member States to the UNHCR in the exercise of its mandate under the Geneva Convention. This transmission is subject to the level of personal data protection in the UNHCR being considered as adequate.***

*Justification*

*This recital is very important and it was in the revised Commission proposal on the Directive.*

Amendment 15
Recital 29 b (new)

***(29b) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention.***

*Justification*

*This recital is very important and it was in the revised Commission proposal on the Directive.*

Amendment 16
Recital 29 c (new)

***(29c) In this spirit, Member States should be encouraged to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the***

[1] OJ L 281, 23.11.1995, p.31

***Geneva Convention for persons who are found not to be refugees, taking into account in particular Council Directive 2004/83/EC.***

*Justification*

*This recital is very important and it was in the revised Commission proposal on the Directive.*

Amendment 17
Recital 29 d (new)

***(29d) Member States should provide for penalties in the event of infringement of the national provisions adopted pursuant to this Directive.***

*Justification*

*This recital is very important and it was in the revised Commission proposal on the Directive.*

Amendment 18
Article 1 a (new)

***Article 1a***

***The Directive respects all the existing international obligations of Member States as well as the Charter of Fundamental Rights of the European Union, especially Article 18, as general principles of Community law.***

*Justification*

*The respect of fundamental rights should be underscored also in an article, not only in the recital, in particular the reference to the right to asylum in the Charter.*

Amendment 19
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 | (b) "Application for asylum" means an application made by ***any non-national*** as a request for international protection from a Member State under the Geneva |

| | |
|---|---|
| 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; | 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;<br><br>*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)* |

*Justification*

*To ensure full compatibility with the Geneva Convention, the definition of "application for asylum" and "refugee" should refer not only to third country nationals, but to any non-national.*

Amendment 20
Article 3 A, 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;*** | ***deleted*** |

*Justification*

*Article 2(b) leaves discretion to border authorities on the application of the principle of national security and it may lead to the denial of international protection, not in line with the Geneva Convention.*

Amendment 21
Article 3 A, paragraph 2, point e

| | |
|---|---|
| (e) refusing permission to enter in the framework of the procedure provided for in Article 35***(2) to (5)***, subject to the conditions and as set out in these paragraphs; | (e) refusing permission to enter in the framework of the procedure provided for in Article 35, subject to the conditions and as set out in these paragraphs; |

*Justification*

*Linked to the modification of Article 35.*

Amendment 22
Article 3 A, paragraph 2, point f

| | |
|---|---|
| ***(f) establishing that an applicant is seeking to enter or has entered in the Member State from a safe third country pursuant to Article 35A, subject to the conditions and as set out in this Article.*** | ***deleted*** |

*Justification*

*The deletion of article 2 is linked to the deletion of article 35A on a "super safe" third country.*

Amendment 23
Article 4 a (new)

| | |
|---|---|
| | ***Article 4a*** |
| | ***No Member State shall expel or return an applicant for asylum to the territory where his or her life or freedom would be threatened on account of his or her race or religion, nationality, language, sexual orientation, membership of a particular social group or political opinion or minority or where he or she faces a real risk of torture or inhuman or degrading treatment.*** |

*Justification*

*The non-refoulement principle is the cornerstone of the Geneva Convention upon which the Tampere conclusions indicate the EU common asylum procedure will be based. Therefore it should be explicitly mentioned under basic principles and guarantees.*

Amendment 24
Article 5, paragraph 1

| | |
|---|---|
| 1. Member States may require that applications for asylum be made in person | 1. Member States may require that applications for asylum be made in person |

| | |
|---|---|
| and/or at a designated place. | and/or at a designated place. ***Member States should allow the possibility that the application is made by a legal representative on behalf of a person, in specific circumstances***. |

*Justification*

*It should be possible, for example, for a person in detention to be represented by a lawyer.*

Amendment 25
Article 5, paragraph 3 a (new)

| | |
|---|---|
| | ***3a. Applications from unaccompanied children and other persons in a particularly vulnerable situation shall be considered and decided on a priority basis. Priority shall also be given to the consideration and decision of manifestly well founded claims.*** |

*Justification*

*The asylum procedure should duly address the special needs of asylum-seekers who are in a particularly vulnerable situation or those who have an obviously well founded claim.*

Amendment 26
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.*** | ***deleted*** |

*Justification*

*The fact that a child applicant is married does not necessarily indicate that s/he is not in need of international protection.*

Amendment 27
Article 6, paragraph 1

| | |
|---|---|
| 1. Applicants shall be allowed to remain in the Member State, ***for the sole purpose of*** | 1. Applicants shall be allowed to remain in the Member State, ***in which the*** |

| | |
|---|---|
| ***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. | ***application for asylum has been made or is being examined until a final decision has been reached and the appeals procedure exhausted.*** This right to remain shall not constitute an entitlement to a residence permit. |

*Justification*

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

Amendment 28
Article 6, paragraph 1 a (new)

| | |
|---|---|
| | ***1a. Member States may derogate from paragraph 1 only when it has been established that the request is manifestly unfounded or clearly abusive. In such cases, a court of law or other independent authority should review and confirm the denial of suspensive effect, based on a review of the facts and the likelihood of success on appeal.*** |

*Justification*

*A derogation may be possible only in cases manifestly unfounded or abusive.*

Amendment 29
Article 6, paragraph 2

| | |
|---|---|
| ***2. Member States can make an exception only where, in accordance with Articles 33 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European Arrest Warrant or otherwise, or to a third country, or to*** | ***deleted*** |

***international criminal courts or tribunals.***

*Justification*

*Article 6 (2) mixes procedural standards for asylum applications with issues related to prosecution and extradition. This Directive is not the correct place where dealing with such issues.*

Amendment 30
Article 9, paragraph 1, point c

| | |
|---|---|
| (c) they ***must not be denied the*** opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR in the territory of the Member State ***pursuant to an agreement with*** that Member State; | (c) they ***should be provided with an effective*** opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR ***or independently*** in the territory of the Member State ***subject to the agreement of*** that Member State, ***at all stages of the procedure***; |

*Justification*

*The amendment is self-evident.*

Amendment 31
Article 10, paragraph 1, subparagraph 1

| | |
|---|---|
| 1. Before a decision is taken by the determining authority, the applicant for asylum ***shall be given the opportunity of*** a personal interview on his/her application for asylum with a person ***competent*** under ***national*** law to conduct such an interview. | 1. Before a decision is taken by the determining authority, the applicant for asylum ***has a right to*** a personal interview on his/her application for asylum with a person ***fully qualified*** under ***international*** law ***in the field of asylum and refugee matters*** to conduct such an interview. |

*Justification*

*It is fundamental that asylum seekers are interviewed by people fully qualified under not only on national, but on international law.*

Amendment 32
Article 10, paragraph 2, point (aa) (new)

| | |
|---|---|
| | ***(aa) the competent authority is not able to conduct the interview, because the applicant has, without good reasons, not*** |

***complied with invitations to appear;***

*Justification*

*The exceptions provided under article 2(b)(c) and 3 undermine the fairness of procedures and the accuracy of decisions. Interviews are necessary in order to allow the applicant to provide all relevant information and to clarify any discrepancies or inconsistencies in his/her account. In the absence of an interview, Member States will not be able to fulfil their obligations under international law and this would inevitably result in the refoulement of individuals. Only very limited exceptions shall be allowed.*

Amendment 33
Article 10, paragraph 2, point (ab)(new)

***(ab) the person has a mental or emotional disturbance which impedes a normal examination of his/her case;***

*Justification*

*The exceptions provided under article 2(b)(c) and 3 undermine the fairness of procedures and the accuracy of decisions. Interviews are necessary in order to allow the applicant to provide all relevant information and to clarify any discrepancies or inconsistencies in his/her account. In the absence of an interview, Member States will not be able to fulfil their obligations under international law and this would inevitably result in the refoulement of individuals. Only very limited exceptions shall be allowed.*

Amendment 34
Article 10, paragraph 2, point b

| | |
|---|---|
| ***(b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with filling his/her application and submitting the essential information regarding the*** | ***deleted*** |

*Justification*

*The exceptions provided under article 2(b)(c) and 3 undermine the fairness of procedures and the accuracy of decisions. Interviews are necessary in order to allow the applicant to provide all relevant information and to clarify any discrepancies or inconsistencies in his/her account. In the absence of an interview, Member States will not be able to fulfil their obligations under international law and this would inevitably result in the refoulement of individuals.*

Amendment 35

Article 10, paragraph 2, point c

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

*Justification*

*See justifications to Article 10, paragraph 2 (b).*

Amendment 36
Article 10, paragraph 3

| | |
|---|---|
| ***3. The personal interview may also be omitted, where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt, Member States may require a medical or psychological certificate.*** | ***deleted*** |
| ***Where the Member State does not provide the opportunity for a personal interview pursuant to this paragraph, or where applicable, to the dependant, reasonable efforts must be made to allow the applicant or the dependant to submit further information.*** | |

*Justification*

*See justifications to Article 10, paragraph 2 (b).*

Amendment 37
Article 10, paragraph 5

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

*Justification*

*Modification linked to the new version of Article 10.*

Amendment 38
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 ***and the interpreter are*** 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 |

*Justification*

The term "sufficiently" appears to indicate a lower degree of competencies and should be deleted.

Amendment 39
Article 12, paragraph 3, subparagraph 3

| | |
|---|---|
| The refusal of an applicant to approve the contents of the report of the personal interview ***shall*** not prevent the determining authority from taking a decision on his/her application. | ***Approval of the asylum applicant should be requested.*** The refusal of an applicant to approve the contents of the report of the personal interview ***may*** not prevent the determining authority from taking a decision on his/her application. |

*Justification*

*The approval of the asylum seeker should be requested to verify the content of the report, to avoid misunderstanding and facilitate the clarification of contradictions.*

Amendment 40
Article 13, paragraph 1

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

| | |
|---|---|
| national law, on matters relating to their asylum applications. | asylum applications ***at all stages of the procedures, including following a negative decision***. |

*Justification*

*Having a legal adviser is a right of asylum seekers and it is an essential safeguard.*

Amendment 41
Article 13, paragraph 3, subparagraph 1, introductory part

| | |
|---|---|
| ***3. Member States may provide in their national legislation that free legal assistance and/or representation be granted:*** | ***3. The assistance must be given free of charge or at least in accordance with Member States' rules on legal aid/financial assistance, which is equivalent to that which is available to nationals, in legal or administrative procedures, if the applicant has no adequate means to pay for it himself.*** |

*Justification*

*Exceptions to the provision of free legal aid should be made only where the applicant has adequate financial means.*

Amendment 42
Article 13, paragraph 3, subparagraph 1, point a

| | |
|---|---|
| ***(a) only for the procedures before a court or tribunal in accordance with Chapter V and not to any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or*** | ***deleted*** |

*Justification*

*This exception is unacceptable according to international law.*

Amendment 43
Article 13, paragraph 3, subparagraph 1, point b

| | |
|---|---|
| ***(b) only to those who lack sufficient resources; and/or*** | ***deleted*** |

*Justification*

*Covered by new paragraph 3 of article 13.*

Amendment 44
Article 13, paragraph 3, subparagraph 1, point c

| | |
|---|---|
| ***(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or*** | ***deleted*** |

*Justification*

*Covered by new paragraph 3 of article 13.*

Amendment 45
Article 13, paragraph 3, subparagraph 1, point d, and suparagraph 2

| | |
|---|---|
| ***(d) only if the appeal or review is likely to succeed.*** | ***deleted*** |
| ***Member States shall ensure that legal assistance and/or representation granted under subparagraph (d) is not arbitrarily restricted*** | |

*Justification*

*This exception is unacceptable according to international law.*

Amendment 46
Article 13, paragraph 4

| | |
|---|---|
| ***4. Rules concerning the modalities for filing and processing such requests may be provided by Member States.*** | ***deleted*** |

*Justification*

*Covered by new paragraph 3 of article 13.*

Amendment 47

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 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***. | (b) ensure that the representative is given the opportunity to inform the unaccompanied ***child*** 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. |

*Justification*

*This restriction seems unnecessary.*

Amendment 48
Article 15, paragraph 2, point c

| | |
|---|---|
| ***(c) is married or has been married.*** | ***deleted*** |

*Justification*

*The fact that a child applicant is married does not necessarily indicate that she/he is not in need of a special protection. Marriage is lawful at a very young age in some countries and it is not related to the maturity of the child.*

Amendment 49
Article 15, paragraph 5 a (new)

| | |
|---|---|
| | ***5a. Persons claiming to be children should be provisionally treated as such, until an age determination has taken place.*** |

*Justification*

*The burden of the proof in this case should be on the side of the authorities.*

Amendment 50
Article 15, paragraph 6

| | |
|---|---|
| 6. The best interests of the child shall be a primary consideration for Member States | 6. The best interests of the child shall be a primary consideration for Member States |

| | |
|---|---|
| when implementing the provisions of this ***Article***. | when implementing the provisions of this ***Directive***. |

*Justification*

*The best interest of the child should be taken into account in all the fields of the Directive.*

Amendment 51
Article 21, paragraph 2

| | |
|---|---|
| 2. Paragraph 1 shall also apply to an organisation which is working ***in the territory of the Member State*** on behalf of the UNHCR ***pursuant to an agreement with that Member State.*** | 2. Paragraph 1 shall also apply to an organisation which is workingon behalf of the UNHCR***, subject to the agreement of the Member State.*** |

*Justification*

*In view of the different arrangements which may be used, UNHCR suggested a different wording.*

Amendment 52
Article 23, paragraph 3 a (new)

| | |
|---|---|
| | ***3a. Member States shall apply the regular procedure to particularly vulnerable persons, including separated children and persons who may have experienced trauma or sexual violence.*** |

*Justification*

*Applications by particularly vulnerable persons should be treated in a regular procedure as matter of principle.*

Amendment 53
Article 23, paragraph 4, point a

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

*Justification*

*The concept of minimal relevance is too vague.*

Amendment 54
Article 23, paragraph 4, point c

| | |
|---|---|
| (c) the application for asylum is considered to be unfounded: | (c) the application for asylum is considered to be unfounded |
| **-** because the applicant is from a safe country of origin within the meaning of Articles 30, ***30A*** and 30B of this Directive, or | 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 a safe third country for the applicant, without prejudice to Article 29(1); or*** | |

*Justification*

*The possibility of prioritising or accelerating of the procedure should be permitted only in cases that are clearly fraudulent or manifestly unfounded.*

*Applicants who do not qualify for refugee status may nevertheless qualify for complementary/subsidiary protection.*

Amendment 55
Article 23, paragraph 4, point d

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

*Justification*

*The possibility of prioritising or accelerating of the procedure should be permitted only in cases that are clearly fraudulent or manifestly unfounded.*

Amendment 56
Article 23, paragraph 4, point e

| | |
|---|---|
| (e) the applicant has filed another application for asylum stating other personal data; or | (e) the applicant***, with a fraudulent intent,*** has filed another application for asylum stating other personal data; or |

*Justification*

*See justification of Article 23, paragraph 4, point d.*

Amendment 57
Article 23, paragraph 4, point f

| | |
|---|---|
| (f) the applicant has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, or, it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or | (f) the applicant***, with a fraudulent intent,*** has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, or, it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or |

*Justification*

*See justification of Article 23, paragraph 4, point d.*

Amendment 58
Article 23, paragraph 4, point g

| | |
|---|---|
| ***(g) the applicant has made inconsistent, contradictory, unlikely or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having being the object of persecution under Council Directive 2004/83/EC; or*** | ***deleted*** |

*Justification*

*Article 23 permits prioritization or acceleration in a wide range of cases, the consequences of which are left largely to the Member States, and may lead to considerably reduced safeguards. Amongst others, the Directive permits States to dispense with personal interviews and other significant procedural requirements. Many such claims will not fall within the definition of "clearly abusive" or "manifestly unfounded" claims, which could be dealt with through an accelerated procedure, according to the conclusions of states and international bodies.*

Amendment 59

Article 23, paragraph 4, point i

| | |
|---|---|
| ***(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or*** | ***deleted*** |

*Justification*

*See justification of Article 23, paragraph 4, point g.*

Amendment 60
Article 23, paragraph 4, point j

| | |
|---|---|
| ***(j) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or*** | ***deleted*** |

*Justification*

*See justification of Article 23, paragraph 4, point g.*

Amendment 61
Article 23, paragraph 4, point k

| | |
|---|---|
| ***(k) the applicant failed without good reasons to comply with obligations referred to in Articles 4(1) and (2) of Council Directive 2004/83/EC or in Articles 9A(2)(a) and (b) and 20(1) of this Directive; or*** | ***deleted*** |

*Justification*

*See justification of Article 23, paragraph 4, point g.*

Amendment 62
Article 23, paragraph 4, point l

| | |
|---|---|
| ***(l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not*** | ***deleted*** |

***presented himself/herself to the authorities and/or filed an application for asylum as soon as possible given the circumstances of his/her entry; or***

*Justification*

*See justification of Article 23, paragraph 4, point g.*

Amendment 63
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 | (m) or the applicant has enforceably been ***excluded from refugee status according to the Geneva Convention;*** or |

*Justification*

*The Geneva Convention foresees the cases where an applicant has been excluded from refugee status. In these cases it is justified to apply a prioritised or accelerated procedure.*

Amendment 64
Article 23, paragraph 4, point n

| | |
|---|---|
| ***(n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or*** | ***deleted*** |

*Justification*

*Non-compliance with the obligation to have fingerprints taken does not necessarily give an indication of the substance of a claim. There may be a variety of reasons, including cultural sensitivities, why asylum-seekers may refuse to have their fingerprints taken. While such a refusal may be taken into account as one element amongst others when assessing the credibility of the claim, it should not serve to channel the application into an accelerated procedure.*

Amendment 65
Article 23, paragraph 4 a (new)

***4a. Member States shall take into consideration complementary/subsidiary protection needs when the procedure has been prioritised or accelerated according to paragraph 4 (a) to (o).***

*Justification*

*Applicants who do not qualify for refugee status may nevertheless qualify for complementary/subsidiary protection.*

Amendment 66
Article 24

| | |
|---|---|
| ***Specific procedures*** | ***deleted*** |
| ***1. Member States may moreover provide for the following specific procedures derogating from the basic principles and guarantees of Chapter II:*** | |
| ***(a) a preliminary examination for the purpose of processing cases considered within the framework of the provisions set out in Section IV;*** | |
| ***(b) procedures for the purpose of processing cases considered within the framework set out in Section V.*** | |
| ***2. Member States may also provide a derogation in respect of Section VI.*** | |

*Justification*

*The possibilities to derogate from minimum standards may lead to breaches of international law. There is no reason for requirements associated with due process of law in asylum claims submitted at the border to be less than those submitted within the territory or in cases of subsequent claims. This article fails to define clearly the principles and guarantees to which exceptions may or may not be made. Such an approach is not conducive to the objective of harmonization of procedural standards, and increases the risk of refoulement.*

Amendment 67
Article 25, paragraph 1 a (new)

***1a. All applications for international protection will first be assessed on the basis of the refugee definition contained in the Geneva Convention and, only if***

| | |
|---|---|
| | ***these criteria are not fulfilled, on the basis of the requirements for subsidiary protection.*** |

*Justification*

*It is fundamental that any application first is considered under criteria of the Geneva Convention and, if these are not met, under the criteria for complementary/subsidiary protection in accordance with other legal obligations.*

Amendment 68
Article 25, paragraph 2, introductory part

| | |
|---|---|
| 2. Member States may consider an application for asylum as inadmissible pursuant to this Article if: | 2. ***Without prejudice to paragraph 1a,*** Member States may consider an application for asylum as inadmissible pursuant to this Article if: |

*Justification*

*It is fundamental that any application first is considered under criteria of the Geneva Convention and, if these are not met, under the criteria for complementary/subsidiary protection in accordance with other legal obligations.*

Amendment 69
Article 25, paragraph 2, point c

| | |
|---|---|
| ***(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27;*** | ***deleted*** |

*Justification*

*The cases of inadmissible applications can be evaluated only according to the Geneva Convention. All points from (c) to (g) are covered by new paragraph 1 a.*

Amendment 70
Article 25, paragraph 2, point d

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

*Justification*

*See justification of Article 25, paragraph 2, point c.*

Amendment 71
Article 25, paragraph 2, point e

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

*Justification*

*See justification of Article 25, paragraph 2, point c.*

Amendment 72
Article 25, paragraph 2, point f

| | |
|---|---|
| ***(f) the applicant has lodged an identical application after a final decision;*** | ***deleted*** |

*Justification*

*See justification of Article 25, paragraph 2, point c.*

Amendment 73
Article 25, paragraph 2, point g

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

*Justification*

*See justification of Article 25, paragraph 2, point c.*

Amendment 74
Article 27, paragraph 1, introductory part

| | |
|---|---|
| 1. Member States may apply the safe third country concept only where ***the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the following principles in the third country concerned:*** | 1. Member States may apply the safe third country concept only where ***the third country fulfils the following criteria***: |

*Justification*

*On the concept of "safe country": The question of whether a particular third country is 'safe' for the purpose of returning an asylum-seeker cannot be answered in a generic fashion, for example by 'national' designation of parliament, for all asylum-seekers in all circumstances. The question of whether asylum-seekers can be sent to a third country for determination of their claim must be answered on an individual basis. If not, the risk of chain refoulement arises. Also third countries have a role to play in the definition of the "safety" of a country and have to follow precise criteria.*

Amendment 75
Article 27, paragraph 1, point a

| | |
|---|---|
| (a) ***life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion***; and | (a) ***ratification and implementation in practice of the Geneva Convention and other international human rights treaties, in particular with reference to the principle of non-refoulement***; and |

*Justification*

*Reference to the Geneva Convention on Article 27, paragraph 1, point a (new) will cover this point as well.*

Amendment 76
Article 27, paragraph 1, point b

| | |
|---|---|
| (b) the principle of non-refoulement in accordance with the Geneva Convention is respected; and | (b) the principle of non-refoulement in accordance with the Geneva Convention is ***in particular*** respected; and |

*Justification*

*The non-refoulement principle is fundamental but not the only one to be respected under the Geneva Convention.*

Amendment 77
Article 27, paragraph 1, point c

| | |
|---|---|
| (c) ***the prohibition on removal in breach of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law is respected***; and | (c) ***existence of an asylum procedure in place leading to the recognition of refugee status and capacity to provide effective protection***; and |

*Justification*

*Reference to the Geneva Convention on Article 27, paragraph 1, point a (new) will cover this point as well*

Amendment 78
Article 27, paragraph 1, point d

| | |
|---|---|
| (d) ***the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.*** | (d) ***explicit consent to (re-)admit the asylum seeker and to provide him/her full access to a fair and efficient determination procedure before any transfer may take place.*** |

*Justification*

*Reference to the Geneva Convention on Article 27, paragraph 1, point a (new) will cover this point as well.*

Amendment 79
Article 27, paragraph 2, point a

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

*Justification*

*"Meaningful link" is more appropriate than just "connection".*

Amendment 80
Article 27, paragraph 2, point c

| | |
|---|---|
| (c) rules, in accordance with international | (c) rules, in accordance with international |

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

*Justification*

*It is enough to have a reference to international law.*

Amendment 81
Article 27, paragraph 2, point (ca) (new)

| | |
|---|---|
| | ***(ca) the effective possibility for the applicants for asylum to rebut the presumption of safety, including in the first instance, even if on an accelerated basis.*** |

*Justification*

*The possibility to rebut the presumption of safety is the condition sine qua non for the acceptance of the "safe country" principle. 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.*

Amendment 82
Article 29, paragraph - 1 (new)

| | |
|---|---|
| | ***-1. Member States may reject an application for asylum as manifestly unfounded if the competent authority has established that the applicant in submitting his application and presenting the facts, has only raised issues that are obviously not relevant to the Geneva Convention.*** |

*Justification*

*Modification in line with the new text of Article 25.*

Amendment 83
Article 29, paragraph 2

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

*Justification*

*The cases mentioned in Article 23(4) have been deleted as not "manifestly unfounded".*

Amendment 84
Article 30, title

| | |
|---|---|
| ***Minimum common*** list of third countries as safe countries of origin | ***Common*** list of third countries as safe countries of origin |

*Justification*

*The Rapporteur considers that the Member States who have not a list on safe countries should not be obliged to adopt it. Moreover the common list at European level should be the only list allowed, not a minimum one allowing Member States to have national lists.*

Amendment 85
Article 30, paragraph 1

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

*Justification*

*The list of safe countries, which will be established not by this Directive, but by a further*

*legislative act, shall be agreed in co-decision by the Council and the European Parliament. In fact, according to the EC Treaty (article 67-§5, first indent), once the Council has adopted the legislation defining the common rules and basic principles on asylum, the procedure to apply is the co-decision one. The Rapporteur considers that the Member States who have not a list on safe countries should not be obliged to adopt it.*

Amendment 86
Article 30, paragraph 2

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

*Justification*

*See justifications to Article 30 - subtitle and Article 30, paragraph 1.*

Amendment 87
Article 30, paragraph 4

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

*Justification*

*See justifications to Article 30 - subtitle and Article 30, paragraph 1.*

Amendment 88
Article 30, paragraph 5

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

*Justification*

*See justifications to Article 30 - subtitle and Article 30, paragraph 1.*

Amendment 89
Article 30, paragraph 7

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

*Justification*

*See justifications to Article 30 - subtitle and Article 30, paragraph 1.*

Amendment 90
Article 30, paragraph 8

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

| | |
|---|---|
| appropriate. | recommendations or proposals as it deems appropriate. |

*Justification*

*See justifications to Article 30 - subtitle and Article 30, paragraph 1.*

Amendment 91
Article 30 A

| | |
|---|---|
| ***Article 30A*** | ***deleted*** |
| ***National designation of third countries as safe countries of origin*** | |
| ***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.***

*Justification*

*The rapporteur is against the possibility to keep or to create national lists of "safe countries of origin".*

Amendment 92
Article 30 B, paragraph 1, introductory part

| | |
|---|---|
| 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: | 1. A third country designated as a safe country of origin in accordance with the provisions of Article 30 can, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if: |

*Justification*

*The Article 30 A has been deleted.*

Amendment 93
Article 30 B, paragraph 2

| | |
|---|---|
| 2. Member States ***shall,*** in accordance with paragraph 1, consider the application for | 2. Member States ***may***, in accordance with paragraph 1, consider the application for |

| | |
|---|---|
| asylum as unfounded where the third country is designated as safe pursuant to Article 30. | asylum as unfounded where the third country is designated as safe pursuant to Article 30. |

*Justification*

*It should not be an obligation for Member States to apply the principle of third safe country of origin.*

Amendment 94
Article 30 B, paragraph 3

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

*Justification*

*International law should be respected in any case.*

Amendment 95
Article 33 A

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

*Justification*

*This article allows limitations on the substantive consideration of asylum applications, if formal requirement have not been met. According to the Geneva Convention, UNHCR objects to rejection of an applicant merely on the basis of failure to fulfil formal obligations.*

Amendment 96
Article 34, paragraph 1

| | |
|---|---|
| 1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 33 enjoy the guarantees listed in Article 9 (1). | 1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 33 enjoy the guarantees listed in Article 9 (1) ***and should in principle be subject to the minimum procedural standards of this Directive***. |

*Justification*

*The amendment is self-evident.*

Amendment 97
Article 35, paragraph 1 a (new)

| | |
|---|---|
| | ***1a. Member States shall ensure that a decision to refuse entry to the territory of a Member State for a reason arising from the application for asylum is taken within two weeks, subject to an extension of the time limit for no more than two weeks agreed upon by a competent judicial body in a procedure prescribed by law.*** |

*Justification*

*The principle of non-discrimination requires that all asylum-seeker, irrespective of whether they apply at the border or inside the country, benefit from the same basic principles and guarantees. There is no reason for requirements of due process of law in asylum cases submitted at the border to be less than for those submitted within the territory. Differences in safeguards may compel asylum-seekers and refugees to enter and stay illegally, in order to be assured of higher standards in the asylum procedure. A specific procedure could be allowed but under the same basic principles and guarantees ensured by the Directive.*

Amendment 98
Article 35, paragraph 1 b (new)

| | |
|---|---|
| | ***1b. Non-compliance with the time limits provided for in paragraph 1a shall result in the applicant for asylum being granted entry to the territory of the Member State in order for his application to be processed in accordance with the other provisions of this Directive. Member States shall ensure that applicants for asylum, who are refused entry in*** |

***accordance with this procedure, enjoy the guarantees referred to in Chapter V.***

*Justification*

*See justification to article 35, paragraph 1 a (new).*

Amendment 99
Article 35, paragraph 1 c (new)

***1c. The refusal of entry into the territory can not override the decision on the application for asylum after an examination on the basis of the facts of the case by authorities competent in the field of asylum and refugee law.***

*Justification*

*See justification to article 35, paragraph 1 a (new).*

Amendment 100
Article 35, paragraph 2

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|---|---|
| ***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.*** | ***deleted*** |

*Justification*

*See justification to article 35, paragraph 1 a (new).*

Amendment 101
Article 35, paragraph 3

| | |
|---|---|
| ***3. The procedures referred to in paragraph 2 shall ensure in particular that the persons concerned:*** | ***deleted*** |
| ***- shall be allowed to remain at the border or transit zones of the Member State, without prejudice to Article 6; and*** | |
| ***- must be immediately informed of their rights and obligations, as described in Article 9 (1) (a); and*** | |
| ***- have access, if necessary, to the services of an interpreter, as described in Article 9 (1) (b); and*** | |
| ***- are interviewed, before the competent authority takes a decision in such procedures, in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 10 to 12; and*** | |
| ***- can consult a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 13 (1); and*** | |
| ***- have a representative appointed in the case of unaccompanied minors, as described in Article 15 (1), unless Article 15(2) or (3) applies.*** | |
| ***Moreover, in case permission to enter is refused by a competent authority, this competent authority shall state the reasons in fact and in law why his/her application for asylum is considered as unfounded or as inadmissible.*** | |

*Justification*

*See justification to article 35, paragraph 1 a (new).*

Amendment 102
Article 35, paragraph 4

| | |
|---|---|
| ***4. Member States shall ensure that a decision in the framework of the*** | ***deleted*** |

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

*Justification*

*See justification to article 35, paragraph 1 a (new).*

Amendment 103
Article 35, paragraph 5

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

*Justification*

*See justification to article 35, paragraph 1 a (new).*

Amendment 104
Article 35 A

| | |
|---|---|
| ***Article 35A*** | ***deleted*** |
| ***1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II 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.***
***2. A third country can only be considered as a safe third country for the purpose of paragraph 1 where:***
***(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations; and***
***(b) it has in place an asylum procedure prescribed by law; and***
***(c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and it observes its provisions, including the standards relating to effective remedies; and***
***(d) it has been so designated by the Council in accordance with paragraph 3.***
***3. The Council shall, acting by qualified majority on the proposal of the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.***
***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.***
***5. When implementing a decision solely based on this Article, Member States concerned shall:***
***(a) inform the applicant accordingly; and***
***(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.***
***6. Where the safe third country does not***

***readmit the applicant for asylum in question, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.***
***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.***

*Justification*

*The concept of the so called "super safe country" is far more unacceptable compare to the safe country principle because no minimum principles and guarantees apply to this procedure and access to the asylum procedure and territory may be denied altogether. Such denial risks being a violation of international refugee law. No category of applicant should be denied access to an asylum procedure completely. UNHCR also strongly recommends the deletion of this article, which was not foreseen in the Commission proposal.*

Amendment 1054
Article 38, paragraph 1, point a, point iii

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|---|---|
| ***(iii) not to conduct an examination pursuant to Article 35A;*** | ***deleted*** |

*Justification*
*Deletion linked to the deletion of Article 35 A.*

Amendment 106
Article 38, paragraph 1, point d

| | |
|---|---|
| (d) a decision refusing entry within the framework of the procedures provided for under Article 35 ***(2);*** | (d) a decision refusing entry within the framework of the procedures provided for under Article 35; |

*Justification*

*Linked to modification in article 35.*

Amendment 107
Article 38, paragraph 3, introductory part

| | |
|---|---|
| 3. Member States shall, ***where appropriate, provide for rules in accordance with their international obligations dealing with:*** | 3. Member States shall ***ensure that the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State pending its outcome.*** |

*Justification*

*Many refugees in Europe are recognized only during the appeal process. Given the potentially serious consequences of an erroneous determination at first instance, the suspensive effect of asylum appeals is a critical safeguard. The principle of effective remedy is a general principle of international law and it is embodied in EC Law (e.g. C-222/84), In Article 47 of the Charter of Fundamental Rights of the European Union and in Article 13 of the European Convention of Human Rights. As held by the European Court of Human Rights, it implies the right to remain in the territory of a Member State until a final decision on the application has been taken.*

Amendment 108
Article 38, paragraph 3, point a

| | |
|---|---|
| ***(a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome; and*** | ***deleted*** |

*Justification*

*See the justification to article 38, paragraph 3, introductory phrase.*

Amendment 109
Article 38, paragraph 3, point b

| | |
|---|---|
| ***(b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex officio remedy; and*** | ***deleted*** |

*Justification*

*See the justification to article 38, paragraph 3, introductory phrase.*

Amendment 110

Article 38, paragraph 3, point c

| | |
|---|---|
| ***(c) the grounds of challenge to a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).*** | ***deleted*** |

*Justification*

*See the justification to article 38, paragraph 3, introductory phrase.*

Amendment 111
Article 38, paragraph 5

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

*Justification*

*See the justification to article 38, paragraph 3, introductory phrase.*

## EXPLANATORY STATEMENT

## Background

Realising a common domestic policy in the field of asylum and migration due to the agreement of Tampere and the following up agreements, the European Union faces big challenges. The European Commission has developed proposals in the framework of this policy to the minimum standards on procedures for granting and withdrawing refugee status, which were presented for evaluation to the Council as well as to the Parliament. The further proceeding foresees that in the framework of the consultation process, the European Parliament will participate. However, the agreements of Tampere and the implementation of the Hague programme have foreseen the introduction of codecision for the European Parliament in the field of asylum and migration policies.

The European Commission presented its first proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status already on September 2000.
On 20 September 2001, the European Parliament adopted the Watson report, approving the Commission proposal with 106 amendments. The negotiations in the Council did not produce an agreement on that draft and in December 2001 the European Council, in the Laeken declaration, requested the Commission to bring forward a modified proposal.

The new draft directive was issued on 18 June 2002. After almost two years of negotiations, on 29 April 2004 the Council agreed on a "general approach", on which,, it decided to consult again the Parliament (19 November 2004).

## Position of the rapporteur

The fact that the Council reached a political agreement before receiving the opinion of the Parliament contradicts the spirit of the European Treaties as well as it contradicts the agreements of the presented documents. So the Parliament has not been asked to exercise its full powers. Therefore the Rapporteur thinks that the Council failed to respect the principle of loyal cooperation between the institutions.
Moreover, the rapporteur is of the opinion that the time-consuming negotiations in the Council have not produced a satisfactory conclusion. The rapporteur believes that the participation of the European Parliament in this process would have led to a much better result.

The rapporteur is primarily concerned by the fact that the procedure apparently will result in the undermining of standards with regard to definitions laid down in international conventions, such as the Geneva Convention concerning the rights of refugees, the UN-convention on children's rights and other fundamental codices.

Additionally the rapporteur is concerned by the fact that the planned first step in the harmonisation of the asylum procedure in the presented form is not satisfactory and even inappropriate, as the Parliament had already concluded back in 2001 when evaluating the first

proposal of the Commission:

- The directive does not achieve significant progress in harmonisation.
- Discretion is left to Member States to retain their national laws, through the many "may" provisions, exceptions and stand still clauses.
- The aim to build a simple, clear and easy-to-access legal structure has been failed. The amended proposal sets out a new structure for asylum procedures in the Member States and the “general approach” text departs from a considerable number of minimum standards originally proposed by the Commission. The current text provides for a great number of substantial exceptions and limitations, which would even allow some Member States to lower their procedural standards. The "level playing field" is therefore reduced to a catalogue of national practices, including many which are not in line with international best practices.

Due to the same reasons the European Parliament had already advised the Commission to withdraw and substantially revise the first proposal in the Watson report 2001.As well as the UNHCR back then and today expressed its deep concerns about a number of restrictive and highly controversial practices that are currently only contained in one or two member states national legislation but could be inserted in the legislation of all 25 EU Member States.

## The rapporteur’s urgent suggestion

Though some Member States have no legislation on asylum, like Italy, the proposed Directive will improve only marginally the state of affairs in other Member States; as a matter of fact, it could definitely be a step back for some of them!
Considering all the facts mentioned before, the rapporteur concludes that the Parliament should only adopt the proposed directive under the condition, that its amendments, particularly with regard to the following points, will be implemented by the Council in the suggested way and with regard to the Parliament's future privilege of codecision.

**1.) The rapporteur regards the concept of the so-called super safe countries to be inappropriate and rejects it in principle**:
This is one of the most alarming aspects of the Directive The Directive assumes that the level of protection available in countries neighbouring the European Union is equivalent to standards in EU Member States. It provides that Member States may deny access to the procedure to all asylum seekers who come from these countries. These provisions do not require an individual assessment and appear to be against the *non-refoulement* principle.

**2.) The rapporteur puts forward his urgent demand to check the safe-third country concept with regard to the actual practice concerning the possible violation of the Geneva Convention and the European Convention for the protection of human rights and fundamental rights to change it in the suggested way.**
According to the UNHCR, it is not possible to designate third countries generally as "safe", without considering the individual case. There are significant concerns about the effectiveness in practice of asylum procedures in the countries of transit at the periphery of the Union, which raise questions about whether they can legitimately be considered "safe". Moreover the Directive allows Member States to remove asylum-seekers to any country willing to accept

them, without any consideration of merits of their claims. It allows Member States to shift their responsibilities to third countries, regardless of whether the applicant will be protected against *refoulement* and treated on a case by case basis.

**3.) The concepts of effective remedy (article 38) and accelerated procedures (articles 23-25) as well as the procedures on borders (Case of border procedures - article 35) have to be revised substantially. This as well with regard to a future repatriation agreement**:

- The article about the **effective remedy** does not guarantee that the appeal process has suspensive effect. It means that there is not an explicit right for all asylum seekers to remain in the asylum country waiting for the outcome of the appeal procedure. This question is left to the Member States' discretion. Such a provision would appear to be contrary to the Geneva Convention and does not insure the respect for the principle of "*non-refoulement*"
- The Directive allows **fast-track procedures** in a too wide range of cases. Accelerated, inadmissibility and special procedures include several exceptions from basic safeguards, especially when an application is considered ill founded. Given the extremely broad definition of "manifestly unfounded claims", Amnesty International fears that most of the applications (more than 80%) will be processed under a fast-track procedure, thus implying that lower procedural safeguards will apply[1]. But refugees might not be able to provide consistent or comprehensive answers for serious personal and human reasons, like trauma (for example war, post-traumatic stress, sexual violence, etc.).
- The Directive permit member States to apply **border procedures** which entail less then minimum procedural safeguards for people requesting asylum at border or transit zones. This practices place inappropriate powers and responsibilities in the hands of border guards and confuses migration control objectives with protection of refugees.

**4.) The rapporteur has specific doubts concerning the regulations for children and juveniles in the framework of the refugee policy laid down in the Council's conclusion**: The Directive states that Member States may "refrain from appointing a representative where the unaccompanied minor is 16 years old or older...".According to the UN-Convention on the Rights of the Child, any person under age 18 should be considered as a child, without differentiation in rights for those over 16. Moreover the fact that the child is or has been married does not necessarily indicate that she/he is not in need of a representative. Marriage in some countries is not related to the maturity of the child.

## Conclusion of the rapporteur

The rapporteur is of the opinion that only if the doubts mentioned before are met, there will be a possibility for a common asylum policy in the European Union which is legitimised by our citizens and which meets the needs of refugees for protection in like manner. The Parliament is the legitimate representative of the citizens. Only with a transparent and democratic procedure, which corresponds to the difficulty of the subject, can we attain the constant consent of the people.

Due to these severe reservations, the rapporteur expects the Council to give his opinion concerning the major concerns mentioned before and the further proceeding in due time.

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