EUROPOS PARLAMENTAS

2004 *2009*

Piliečių laisvių, teisingumo ir vidaus reikalų komitetas

NEGALUTINIS
2000/0238(CNS)

2005 5 11

*

PRANEŠIMO PROJEKTAS

dėl iš dalies pakeisto pasiūlymo dėl Tarybos direktyvos, nustatančios būtiniausius reikalavimus dėl pabėgėlio statuso suteikimo ir panaikinimo tvarkos valstybėse narėse
(14203/2004 – C6-0200/2004 – 2000/0238(CNS))

(atnaujinta konsultavimosi procedūra)

Piliečių laisvių, teisingumo ir vidaus reikalų komitetas

Pranešėjas: Wolfgang Kreissl-Dörfler

Procedūrų sutartiniai ženklai

*	Konsultavimosi procedūra *balsavusių narių balsų dauguma*
**I	Bendradarbiavimo procedūra (pirmasis svarstymas) *balsavusių narių balsų dauguma*
**II	Bendradarbiavimo procedūra (antrasis svarstymas) *balsavusių narių balsų dauguma pritariama bendrajai pozicijai* *visų Parlamento narių balsų dauguma atmetama arba taisoma bendroji pozicija*
***	Pritarimo procedūra *visų Parlamento narių balsų dauguma, išskyrus EB sutarties 105, 107, 161 ir 300 straipsniuose bei ES sutarties 7 straipsnyje numatytus atvejus*
***I	Bendro sprendimo procedūra (pirmasis svarstymas) *balsavusių narių balsų dauguma*
***II	Bendro sprendimo procedūra (antrasis svarstymas) *balsavusių narių balsų dauguma pritariama bendrajai pozicijai* *visų Parlamento narių balsų dauguma atmetama arba taisoma bendroji pozicija*
***III	Bendro sprendimo procedūra (trečiasis svarstymas) *balsavusių narių balsų dauguma pritariama bendram tekstui*

(Procedūra pasirenkama atsižvelgiant į Komisijos pasiūlymo teisinį pagrindą.)

Teisės akto pakeitimai

Parlamento pakeitimų tekstas yra paryškinamas ***pusjuodžiu kursyvu.*** Paryškinimas *paprastu kursyvu* parodo atitinkamiems skyriams tas teisės akto projekto vietas, kurias siūloma taisyti rengiant galutinį tekstą (pvz., tekste tam tikra kalba paliktas akivaizdžias klaidas ar praleistas vietas). Pasiūlytiems tokio pobūdžio pataisymams reikalingas atitinkamų skyrių sutikimas.

TURINYS

Puslapis

EUROPOS PARLAMENTO TEISĖKŪROS REZOLIUCIJOS PROJEKTAS.....4

EXPLANATORY STATEMENT.....51

EUROPOS PARLAMENTO TEISĖKŪROS REZOLIUCIJOS PROJEKTAS

dėl iš dalies pakeisto pasiūlymo dėl Tarybos direktyvos, nustatančios būtiniausius reikalavimus dėl pabėgėlio statuso suteikimo ir panaikinimo tvarkos valstybėse narėse (14203/04 – C6-0200/2004 – 2000/0238(CNS))

(Konsultavimosi procedūra – atnaujintas konsultavimasis)

Europos Parlamentas,

– atsižvelgdamas į Tarybos projektą (14203/2004)[1] ir

– atsižvelgdamas į Komisijos pateiktą pasiūlymą su pakeitimais Tarybai (KOM(2002)0326)[2],

– atsižvelgdamas į 2001 m. rugsėjo 20 d. savo poziciją[3]

– atsižvelgdamas į EB steigimo sutarties 63 straipsnio 1 dalies 1 d punktą,

– atsižvelgdamas į EB steigimo sutarties 67 straipsnį, kuriuo vadovaudamasi Taryba konsultavosi su Parlamentu (C6-0200/2004),

– atsižvelgdamas į Darbo tvarkos taisyklių 51 straipsnį, 41 straipsnio 4 dalį ir 55 straipsnio 3 dalį,

– atsižvelgdamas į Piliečių laisvių, teisingumo ir vidaus reikalų komiteto pranešimą ir Užsienio reikalų komiteto bei Teisės reikalų komiteto nuomones (A6-0000/2005),

1. pritaria Tarybos pasiūlymui su pakeitimais;

2. ragina Komisiją atitinkamai pakeisti savo pasiūlymą, vadovaujantis EB steigimo sutarties 250 straipsnio 2 dalimi;

3. ragina Tarybą informuoti Parlamentą, jeigu ji ketintų nukrypti nuo Parlamento patvirtinto teksto;

4. paveda Pirmininkui perduoti Parlamento poziciją Tarybai ir Komisijai.

Tarybos siūlomas tekstas	Parlamento pakeitimai
Pakeitimas 1 3a konstatuojamoji dalis (nauja)	
	(3a) Europos Vadovų Taryba 2004 m. lapkričio 4 ir 5 d. Hagoje vykusio

[1] OL C ... / Dar nepaskelbta Oficialiajame leidinyje.
[2] OL C 291E, 2002 11 26, p. 143.
[3] OL C 77, 2002 3 28, p. 20.

	susitikimo metu patvirtino Tamperėje priimtą pasiūlymą ir susitarė, kad iki 2010 m. būtų nustatyta bendra prieglobsčio procedūra ir vienodas statusas asmenims, kuriems suteiktas prieglobstis ar papildoma apsauga.

Justification

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

Pakeitimas 2
5 konstatuojamoji dalis

(5) Pagrindinis šios direktyvos tikslas – Europos bendrijoje sukurti būtiniausią pabėgėlio statuso suteikimo arba panaikinimo tvarkos sistemą.	(5) Pagrindinis šios direktyvos tikslas – Europos bendrijoje sukurti būtiniausią pabėgėlio statuso suteikimo arba panaikinimo tvarkos sistemą, ***užtikrinant, kad jokia valstybė narė jokiu būdu neišsiųstų arba negrąžintų prieglobsčio prašančio asmens į pasienio teritorijas, kur jo gyvybei ar laisvei kiltų grėsmė dėl jo rasės, lyties, religinių įsitikinimų, tautybės, kalbos, seksualinės orientacijos, narystės tam tikroje socialinėje grupėje, politinės nuomonės arba priklausymo mažumai.***

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.

Pakeitimas 3
8 konstatuojamoji dalis

(8) Šioje direktyvoje gerbiamos pagrindinės teisės ir laikomasi principų, kurie pirmiausia yra pripažinti Europos	(8) Šioje direktyvoje gerbiamos pagrindinės teisės ir laikomasi principų, kurie pirmiausia yra pripažinti Europos Sąjungos pagrindinių teisių chartijoje, ***kaip***

Sąjungos pagrindinių teisių chartijoje.	***Bendrijos teisės bendrieji principai, ir įtvirtinti visuose galiojančiuose tarptautiniuose įsipareigojimuose, ypač Ženevos konvencijoje.***

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.

Pakeitimas 4
13 konstatuojamoji dalis

(13) Siekiant teisingai pripažinti asmenis, kuriems reikalinga apsauga, pabėgėliais, kaip apibrėžta Ženevos konvencijos 1 straipsnyje, kiekvienam prašytojui, ***taikant tam tikras išimtis***, turėtų būti leista veiksmingai pasinaudoti procedūromis, suteikta galimybė bendradarbiauti ir susisiekti su kompetentingomis institucijomis siekiant pateikti susijusius savo bylos faktus bei suteiktos ***pakankamos*** procedūrinės garantijos išdėstyti savo argumentus visais procedūros etapais ir visos procedūros metu. Be to, prieglobsčio prašymo nagrinėjimo procedūroje ***paprastai*** turėtų būti numatyta bent jau prašytojo teisė pasilikti, kol bus priimtas sprendžiančiosios institucijos sprendimas, pasinaudoti vertėjo paslaugomis savo argumentams pateikti, jei jį apklausia valdžios institucijos, galimybė susisiekti su Jungtinių Tautų pabėgėlių reikalų vyriausiojo komisaro (JTPRVK) atstovu ar su kita jo vardu dirbančia organizacija, teisė gauti atitinkamą pranešimą apie sprendimą, to sprendimo faktinį ir teisinį pagrindimą, galimybė konsultuotis su patarėju teisės klausimais ar kitu patarėju, teisė būti informuotam apie savo teisinę padėtį sprendžiamaisiais procedūros etapais kalba, kurią, ***kaip pagrįstai***	(13) Siekiant teisingai pripažinti asmenis, kuriems reikalinga apsauga, pabėgėliais, kaip apibrėžta Ženevos konvencijos 1 straipsnyje, kiekvienam prašytojui turėtų būti leista veiksmingai pasinaudoti procedūromis, suteikta galimybė bendradarbiauti ir susisiekti su kompetentingomis institucijomis siekiant pateikti susijusius savo bylos faktus bei suteiktos procedūrinės garantijos išdėstyti savo argumentus visais procedūros etapais ir visos procedūros metu. Be to, prieglobsčio prašymo nagrinėjimo procedūroje turėtų būti numatyta bent jau prašytojo teisė pasilikti, kol bus priimtas sprendžiančiosios institucijos sprendimas, pasinaudoti vertėjo paslaugomis savo argumentams pateikti, jei jį apklausia valdžios institucijos, galimybė susisiekti su Jungtinių Tautų pabėgėlių reikalų vyriausiojo komisaro (JTPRVK) atstovu ar su kita jo vardu dirbančia organizacija, teisė gauti atitinkamą pranešimą apie sprendimą, to sprendimo faktinį ir teisinį pagrindimą, galimybė konsultuotis su patarėju teisės klausimais ar kitu patarėju, teisė būti informuotam apie savo teisinę padėtį sprendžiamaisiais procedūros etapais kalba, kurią ***jis supranta.***

manoma, jis turėtų suprasti.

(Formuluotė „kaip pagrįstai manoma“ turėtų būti išbraukta visame tekste. Priėmus šį pakeitimą reikės atitinkamai išbraukti visame tekste.)

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.

Pakeitimas 5
14 konstatuojamoji dalis

(14) Be to, reikėtų nustatyti konkrečias procedūrines garantijas nelydimiems ***nepilnamečiams*** dėl jų pažeidžiamumo. Todėl valstybės narės pirmiausia turėtų atsižvelgti į vaiko interesus.	(14) Be to, reikėtų nustatyti konkrečias procedūrines garantijas nelydimiems ***vaikams*** dėl jų pažeidžiamumo. Todėl valstybės narės pirmiausia turėtų atsižvelgti į vaiko interesus. *(Šis pakeitimas taikomas visam tekstui. Priėmus jį reikės atitinkamai padaryti atitinkamus pakeitimus visame tekste.)*

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.

Pakeitimas 6
16 konstatuojamoji dalis

(16) Daugelis prieglobsčio prašymų paduodami valstybės narės pasienyje arba tranzito zonoje prieš priimant sprendimą dėl prašytojo atvykimo. Valstybės narės turėtų sugebėti esamas procedūras priderinti prie konkrečios šių prašytojų padėties pasienyje. ***Reikėtų apibrėžti bendras taisykles, reglamentuojančias šiomis aplinkybėmis galimas garantijų,***	(16) Daugelis prieglobsčio prašymų paduodami valstybės narės pasienyje arba tranzito zonoje prieš priimant sprendimą dėl prašytojo atvykimo. Valstybės narės turėtų sugebėti esamas procedūras priderinti prie konkrečios šių prašytojų padėties pasienyje. Pasienio procedūros iš esmės turėtų būti taikomos tiems prašytojams, kurie netenkina atvykimo į

kurios paprastai suteikiamos prašytojams, išimtis. Pasienio procedūros iš esmės turėtų būti taikomos tiems prašytojams, kurie netenkina atvykimo į valstybių narių teritoriją sąlygų.	valstybių narių teritoriją sąlygų.

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.

Pakeitimas 7
19 konstatuojamoji dalis

(19) Tarybai įsitikinus, kad laikomasi minėtų konkrečiai kilmės šaliai nustatytų kriterijų, ir dėl tos priežasties tą šalį įtraukus į ***minimalų*** bendrą saugių kilmės šalių sąrašą, patvirtintiną pagal šią direktyvą, valstybės narės ***turėtų būti įpareigotos*** svarstyti tos šalies pilietybę turinčių asmenų ar anksčiau toje šalyje nuolat gyvenusių asmenų be pilietybės prašymus remdamosi ginčijama tos šalies saugumo prezumpcija. Atsižvelgdama į priskyrimo saugioms kilmės šalims politinę reikšmę, ypač į žmogaus teisių padėties kilmės šalyje įvertinimo poveikį bei jos reikšmę Europos Sąjungos išorės santykių politikos kryptims, Taryba turėtų priimti sprendimus dėl sąrašo nustatymo ar keitimo ***pasikonsultavusi su Europos Parlamentu***.	(19) Tarybai įsitikinus, kad laikomasi minėtų konkrečiai kilmės šaliai nustatytų kriterijų, ir dėl tos priežasties tą šalį įtraukus į bendrą saugių kilmės šalių sąrašą, patvirtintiną pagal šią direktyvą, valstybės narės ***gali*** svarstyti tos šalies pilietybę turinčių asmenų ar anksčiau toje šalyje nuolat gyvenusių asmenų be pilietybės prašymus remdamosi ginčijama tos šalies saugumo prezumpcija. Atsižvelgdama į priskyrimo saugioms kilmės šalims politinę reikšmę, ypač į žmogaus teisių padėties kilmės šalyje įvertinimo poveikį bei jos reikšmę Europos Sąjungos išorės santykių politikos kryptims, Taryba ***pagal bendro sprendimo su Europos Parlamentu procedūrą*** turėtų priimti sprendimus dėl sąrašo nustatymo ar keitimo.

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.

Pakeitimas 8
20 konstatuojamoji dalis

(20) Dėl Bulgarijos ir Rumunijos, kaip šalių kandidačių stoti į Europos Sąjungą statuso ir šių šalių pažangos, padarytos siekiant narystės, statuso šioje direktyvoje jos turėtų būti laikomos saugiomis kilmės šalimis iki jų įstojimo į Europos Sąjungą dienos.	***Išbraukta.***

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.

Pakeitimas 9
22 konstatuojamoji dalis

(22) Valstybės narės turėtų iš esmės išnagrinėti visus prašymus, t.y., įvertinti, ar konkretus prašytojas tenkina reikalavimus, pagal kuriuos jis laikomas pabėgėliu pagal Tarybos direktyvą 2004/83/EB, nustatančią būtiniausius reikalavimus, pagal kuriuos trečiosios šalies piliečiai ar asmenys be pilietybės laikomi pabėgėliais ar asmenimis, kuriems dėl kitų priežasčių būtina tarptautinė apsauga, reikalavimus jų statusui bei suteiktos apsaugos turiniui , išskyrus atvejus, kai šioje direktyvoje numatyta kitaip, pirmiausia, kai galima pagrįstai manyti, kad kita šalis prašymus išnagrinėtų ar suteiktų ***pakankamą*** apsaugą. Pirmiausia, valstybės narės neturėtų būti įpareigotos įvertinti prieglobsčio prašymo turinio, kai pirmoji prieglobsčio šalis suteikia prašytojui pabėgėlio statusą ar kitą ***pakankamą*** apsaugą ir prašytojas bus priimtas į tą šalį.	(22) Valstybės narės turėtų iš esmės išnagrinėti visus prašymus, t.y., įvertinti, ar konkretus prašytojas tenkina reikalavimus, pagal kuriuos jis laikomas pabėgėliu pagal Tarybos direktyvą 2004/83/EB, nustatančią būtiniausius reikalavimus, pagal kuriuos trečiosios šalies piliečiai ar asmenys be pilietybės laikomi pabėgėliais ar asmenimis, kuriems dėl kitų priežasčių būtina tarptautinė apsauga, reikalavimus jų statusui bei suteiktos apsaugos turiniui , išskyrus atvejus, kai šioje direktyvoje numatyta kitaip, pirmiausia, kai galima pagrįstai manyti, kad kita šalis prašymus išnagrinėtų ar suteiktų ***veiksmingą*** apsaugą. Pirmiausia, valstybės narės neturėtų būti įpareigotos įvertinti prieglobsčio prašymo turinio, kai pirmoji prieglobsčio šalis suteikia prašytojui pabėgėlio statusą ar kitą ***veiksmingą*** apsaugą ir prašytojas bus priimtas į tą šalį. *(Šis pakeitimas taikomas visam tekstui. Priėmus jį reikės padaryti atitinkamus pakeitimus visame tekste.)*

Justification

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

Pakeitimas 10
24 konstatuojamoji dalis

(24) Be to, tam tikrų Europos trečiųjų šalių, kurios laikosi ypač aukštų žmogaus teisių ir pabėgėlių apsaugos reikalavimų, atžvilgiu valstybėms narėms turėtų būti leista nenagrinėti arba tik iš dalies nagrinėti prieglobsčio prašymus, paduotus prašytojų, atvykusių į jų teritoriją iš tokių Europos trečiųjų šalių. Atsižvelgiant į galimus riboto ar neatlikto nagrinėjimo padarinius prašytojams, tokia saugios trečiosios šalies sąvoka turėtų būti taikoma tik tais atvejais, kurie yra susiję su trečiosiomis šalimis, kuriose, Tarybos įsitikinimu, tenkinami aukšti atitinkamos trečiosios šalies saugumo reikalavimai, kaip išdėstyta šioje direktyvoje. Taryba turėtų priimti sprendimus šiuo klausimu pasikonsultavusi su Europos Parlamentu.	***Išbraukta.***

Justification

See justification to Am 35 A.

Pakeitimas 11
25 konstatuojamoji dalis

(25) Dėl bendrų reikalavimų, susijusių su ***abiem*** šioje direktyvoje išdėstytomis saugios trečiosios šalies ***sąvokomis***, pobūdžio, praktinis ***sąvokų*** poveikis priklauso nuo to, ar konkreti trečioji šalis įleidžia konkretų prašytoją į savo teritoriją.	(25) Dėl bendrų reikalavimų, susijusių su šioje direktyvoje išdėstyta saugios trečiosios šalies ***sąvoka***, pobūdžio, praktinis ***sąvokos*** poveikis priklauso nuo to, ar konkreti trečioji šalis įleidžia konkretų prašytoją į savo teritoriją.

Justification

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

Pakeitimas 12
27 konstatuojamoji dalis

(27) Pagrindinį Bendrijos teisės principą atspindi tai, kad sprendimus, priimtus dėl prieglobsčio prašymų ir dėl pabėgėlio statuso panaikinimo, turi būti galima veiksmingai apskųsti teisme, kaip apibrėžta Europos bendrijos steigimo sutarties 234 straipsnyje. ***Šios teisės gynimo priemonės veiksmingumas bei susijusių faktų nagrinėjimas priklauso nuo visos kiekvienos valstybės narės administracinės ir teisinės sistemos.***	(27) Pagrindinį Bendrijos teisės principą atspindi tai, kad sprendimus, priimtus dėl prieglobsčio prašymų ir dėl pabėgėlio statuso panaikinimo, turi būti galima veiksmingai apskųsti teisme, kaip apibrėžta Europos bendrijos steigimo sutarties 234 straipsnyje. ***Turėtų būti galimybė priimtus dėl prieglobsčio prašymo sprendimus peržiūrėti apeliacine tvarka, teismui patikrinant ir faktus, ir teisinį pagrindą. Prašytojas neturėtų būti išsiųstas, kol teismas priims sprendimą dėl teisės pasilikti šalyje laukiant apeliacijos nutarties.***

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.

Pakeitimas 13
28 konstatuojamoji dalis

(28) Pagal Europos bendrijos steigimo sutarties 64 straipsnį ši direktyva neatleidžia valstybių narių nuo pareigos palaikyti viešąją tvarką ir užtikrinti vidaus saugumą.	***Išbraukta.***

Justification

This recital has nothing to do with the Directive.

Pakeitimas 14
29a konstatuojamoji dalis (nauja)

(29a) Įgyvendinant šią Direktyvą asmens duomenų atžvilgiu taikoma 1995 m. spalio 24 d. Europos Parlamento ir Tarybos direktyva 95/46/EB dėl asmenų apsaugos, tvarkant asmens duomenis ir dėl laisvo tokių duomenų judėjimo[1]. Direktyva 95/46/EB taip pat taikoma duomenų, kuriuos valstybės narės perduoda JTPRVK, vykdančiam savo įgaliojimus pagal Ženevos konvenciją, atžvilgiu. Šis duomenų perdavimas turi būti atliekamas laikantis JTPRVK nuožiūra tinkamo asmens duomenų apsaugos lygio.

Justification

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

Pakeitimas 15
29b konstatuojamoji dalis (nauja)

(29b) Dėl paties būtiniausių reikalavimų pobūdžio valstybėms narėms turėtų būti suteikta teisė nustatyti arba toliau taikyti palankesnes nuostatas asmenims, kurie valstybės narės prašo tarptautinės apsaugos, jei susitariama, kad toks prašymas yra grindžiamas tuo, kad atitinkamas asmuo yra pabėgėlis, kaip apibrėžta Ženevos konvencijos 1 straipsnio A dalyje.

Justification

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

Pakeitimas 16
29c konstatuojamoji dalis (nauja)

(29c) Todėl valstybės narės turėtų būti skatinamos taikyti šios Direktyvos nuostatas toms procedūroms, kai priimami sprendimai dėl kitokios

[1] OL L 281, 1995 11 23, p.31.

apsaugos, negu numatyta Ženevos konvencijoje, suteikimo asmenims, kurie nepripažįstami pabėgėliais, ypač atsižvelgiant į Tarybos direktyvą 2004/83/EB.

Justification

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

Pakeitimas 17
29d konstatuojamoji dalis (nauja)

(29d) Valstybės narės turėtų numatyti sankcijas nacionalinių nuostatų, priimtų remiantis šia Direktyva, pažeidimo atveju.

Justification

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

Pakeitimas 18
1a straipsnis (naujas)

1a straipsnis

Šioje Direktyvoje atsižvelgiama į visus galiojančius valstybių narių tarptautinius įsipareigojimus ir į Europos Sąjungos pagrindinių teisių chartiją, ypač į jos 18 straipsnį, kaip Bendrijos teisės bendruosius principus.

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.

Pakeitimas 19
2 straipsnio b punktas

b) „prieglobsčio prašymas“ – ***trečiosios šalies piliečio arba asmens be pilietybės*** pateiktas prašymas***, kuris gali būti***	b) „prieglobsčio prašymas“ – ***neturinčio valstybių narių pilietybės*** asmens pateiktas prašymas, kaip tarptautinės apsaugos

laikomas tarptautinės apsaugos valstybėje narėje prašymu pagal Ženevos konvenciją. Dėl kiekvieno tarptautinės apsaugos prašymo daroma prielaida, kad tai yra prieglobsčio prašymas, jeigu atitinkamas asmuo aiškiai neprašo kitokios apsaugos, dėl kurios gali būti kreipiamasi atskirai;	valstybėje narėje prašymas pagal Ženevos konvenciją. Dėl kiekvieno tarptautinės apsaugos prašymo daroma prielaida, kad tai yra prieglobsčio prašymas, jeigu atitinkamas asmuo aiškiai neprašo kitokios apsaugos, dėl kurios gali būti kreipiamasi atskirai; *(Šis pakeitimas taikomas visam tekstui. Priėmus jį reikės padaryti atitinkamus pakeitimus visame tekste.)*

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.

Pakeitimas 20
3A straipsnio 2 pastraipos b punktas

b) priima sprendimą dėl prašymo, atsižvelgdama į nacionalinio saugumo nuostatas, jeigu prieš priimant tokį sprendimą buvo pasitarta su sprendžiančiąja institucija, ar prašytojas pripažįstamas pabėgėliu pagal Tarybos direktyvą 2004/83/EB;	***Išbraukta.***

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.

Pakeitimas 21
3A straipsnio 2 dalies e punktas

e) atsisako išduoti leidimą atvykti į šalį pagal 35 straipsnio ***2–5*** dalyse numatytą tvarką, taikant šiose straipsnio dalyse nustatytas sąlygas ir nuostatas;	e) atsisako išduoti leidimą atvykti į šalį pagal 35 straipsnyje numatytą tvarką, taikant šiose straipsnio dalyse nustatytas sąlygas ir nuostatas;

Justification

Linked to the modification of Article 35.

Pakeitimas 22
3A straipsnio 2 dalies f punktas

f) nustato, kad prašytojas siekia atvykti arba atvyko į valstybę narę iš saugios trečiosios šalies pagal 35A straipsnį, taikant šiame straipsnyje nustatytas sąlygas ir nuostatas.	***Išbraukta.***

Justification

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

Pakeitimas 23
4a dalis (nauja)

	4a straipsnis
	Nė viena valstybė narė neišsiunčia arba negrąžina prieglobsčio prašančio asmens į teritorijas, kur jo (ar jos) gyvybei ar laisvei kiltų grėsmė dėl jo rasės ar religinių įsitikinimų, tautybės, kalbos, seksualinės orientacijos, narystės tam tikroje socialinėje grupėje, politinės nuomonės ar priklausymo mažumai, arba kur jam ar jai grėstų realus kankinimų, žiauraus arba žeminančio elgesio pavojus.

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.

Pakeitimas 24
5 straipsnio 1 dalis

1. Valstybės narės gali reikalauti, kad	1. Valstybės narės gali reikalauti, kad

prieglobsčio prašymai būtų pateikti asmeniškai ir (arba) tam skirtoje vietoje.	prieglobsčio prašymai būtų pateikti asmeniškai ir (arba) tam skirtoje vietoje. ***Valstybės narės turi numatyti galimybę, kad ypatingomis aplinkybėmis prašymą galėtų pateikti asmens įgaliotas teisėtas atstovas.***

Justification

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

Pakeitimas 25
5 straipsnio 3 a dalis (nauja)

	3a. Nelydimų vaikų ir kitų ypač pažeidžiamoje padėtyje esančių asmenų pateikti prašymai gali būti svarstomi ir sprendimai dėl jų priimami pirmenybės tvarka. Pirmenybė taip pat turėtų būti teikiama svarstant ir priimant sprendimus dėl akivaizdžiai pagrįstų prašymų.

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.

Pakeitimas 26
5 straipsnio 4 dalies c punktas

c) atvejus, kai laikoma, kad prieglobsčio prašymo pateikimas taip pat apima prieglobsčio prašymo nevedusiam nepilnamečiui pateikimą.	***Išbraukta.***

Justification

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

Pakeitimas 27
6 straipsnio 1 dalis

1. ***Tik taikant šią tvarką*** prašytojams	1. Prašytojams leidžiama pasilikti

leidžiama pasilikti valstybėje narėje ***iki to laiko, kol sprendžiančioji institucija priima sprendimą pagal pirmosios instancijos procedūras, nustatytas III skyriuje.*** Ši teisė pasilikti nesuteikia teisės į leidimą gyventi valstybėje narėje.	valstybėje narėje, ***kurioje buvo pateiktas prašymas suteikti prieglobstį arba kurioje šis prašymas nagrinėjamas, kol bus priimtas galutinis sprendimas ir pasinaudota apeliacijos procedūros galimybe.*** Ši teisė pasilikti nesuteikia teisės į leidimą gyventi valstybėje narėje.

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.

Pakeitimas 28
6 straipsnio 1a dalis (nauja)

	1a. Valstybės narės gali nukrypti nuo 1 dalies nuostatų tik tuo atveju, kai buvo nustatyta, kad prašymas yra akivaizdžiai nepagrįstas ar juo neabejotinai piktnaudžiaujama. Tokiais atvejais teismas ir kita nepriklausoma institucija turėtų peržiūrėti ir patvirtinti leidimo pasilikti šalyje atmetimo pagrįstumą, remiantis faktų patikrinimu ir sėkmingos apeliacijos tikimybe.

Justification

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

Pakeitimas 29
6 straipsnio 2 dalis

2. Valstybės narės gali daryti išimtį tik tais atvejais, kai pagal 33 ir 34 straipsnius vėlesnis prašymas nebus toliau nagrinėjamas arba kai jos atitinkamai perduoda arba išduoda asmenį kitai valstybei narei, remdamosi įsipareigojimais pagal Europos arešto	***Išbraukta.***

orderį arba kitais įsipareigojimais, trečiajai šaliai arba tarptautiniams baudžiamiesiems teismams.

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.

Pakeitimas 30
9 straipsnio 1 dalies c punktas

c) jiems ***neturi būti atimta*** galimybė bendrauti su JTVPRK arba bet kokia kita organizacija, dirbančia JTVPRK vardu, valstybės narės teritorijoje, ***vadovaujantis susitarimu su*** ta valstybe nare;	c) jiems ***turi būti suteikta*** galimybė ***veiksmingai*** bendrauti su JTVPRK arba bet kokia kita organizacija, dirbančia JTVPRK vardu ***arba nepriklausomai***, valstybės narės teritorijoje ***gavus*** tos valstybės narės ***sutikimą***, ***visos procedūros metu***;

Justification

The amendment is self-evident.

Pakeitimas 31
10 straipsnio 1 dalies 1 punktas

1. Prieš sprendžiančiajai institucijai priimant sprendimą, prieglobsčio prašytojui ***suteikiama galimybė*** atvykti asmeninio pokalbio dėl prieglobsčio prašymo su asmeniu, pagal ***nacionalinę*** teisę ***kompetentingu*** vesti tokius pokalbius.	1. Prieš sprendžiančiajai institucijai priimant sprendimą, prieglobsčio prašytojas ***turi teisę*** atvykti asmeninio pokalbio dėl prieglobsčio prašymo su asmeniu, pagal ***tarptautinę*** teisę ***prieglobsčio ir pabėgėlių reikalų srityje įgalioto*** vesti tokius pokalbius.

Justification

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

Pakeitimas 32
10 straipsnio 2 dalies, aa punktas (naujas)

	aa) kompetentinga institucija negali vesti pokalbio, nes prašytojas be pateisinamų

priežasčių neatvyksta kviečiamas;

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.

Pakeitimas 33
10 straipsnio 2 dalies ab punktas (naujas)

ab) asmuo kenčia dėl protinės ar emocinės būklės sutrikimų, kurie trukdo normaliam jo (ar jos) bylos nagrinėjimui;

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.

Pakeitimas 34
10 straipsnio 2 dalies b punktas

b) kompetentinga institucija jau buvo susitikusi su prašytoju tam, kad padėtų jam užpildyti prašymą ir pateikti esminę informaciją dėl prašymo, remiantis Tarybos direktyvos 2004/83/EB 4 straipsnio 2 dalimi; arba	***Išbraukta.***

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.

Pakeitimas 35
10 straipsnio 2 dalies c punktas

c) remdamasi išsamiai išnagrinėta prašytojo pateikta informacija, sprendžiančioji institucija laiko prašymą nepagrįstu tais atvejais, kai taikomos 23 straipsnio 4 dalies a, c, g, h ir j punktuose minimos aplinkybės.	***Išbraukta.***

Justification

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

Pakeitimas 36
10 straipsnio 3 dalis

3. Asmeninio pokalbio gali nebūti ir tuomet, kai jis nėra pagrįstai naudingas, ypač kai kompetentinga institucija mano, kad prašytojas nėra tinkamas pokalbiui arba su juo negalima kalbėtis dėl ilgalaikių nuo jo nepriklausančių aplinkybių. Jeigu kyla abejonių, valstybės narės gali reikalauti medicininės arba psichologo pažymos.	***Išbraukta.***
Kai valstybė narė nesuteikia asmeninio pokalbio galimybės pagal šią straipsnio dalį, arba, kai taikytina, tokia galimybė nesuteikiama išlaikytiniam asmeniui, turi būti dedamos pagrįstos pastangos leisti prašytojui arba išlaikytiniam asmeniui pateikti papildomą informaciją.	

Justification

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

Pakeitimas 37
10 straipsnio 5 dalis

5. Tai, kad asmeninis pokalbis nevykdomas pagal 2 dalies ***b ir c punktus bei 3 dalį***, neturi neigiamai paveikti sprendžiančiosios	5. Tai, kad asmeninis pokalbis nevykdomas pagal 2 dalies ***aa ir ab punktus***, neturi neigiamai paveikti sprendžiančiosios

institucijos sprendimo.	institucijos sprendimo.

Justification

Modification linked to the new version of Article 10.

Pakeitimas 38
11 straipsnio 3 dalies a punktas

a) užtikrina, kad pokalbį vedantis asmuo būtų ***pakankamai*** kompetentingas, kad kiek įmanoma atsižvelgtų į prašymo asmenines ir bendrąsias aplinkybes, įskaitant prašytojo kultūrinę kilmę ar pažeidžiamumą, ir	a) užtikrina, kad pokalbį vedantis asmuo ***ir vertėjas*** būtų pakankamai kompetentingi, kad kiek įmanoma atsižvelgtų į prašymo asmenines ir bendrąsias aplinkybes, įskaitant prašytojo kultūrinę kilmę ar pažeidžiamumą, ir

Justification

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

Pakeitimas 39
12 straipsnio 3 dalies 3 punktas

Prašytojo atsisakymas patvirtinti asmeninio pokalbio ataskaitos turinį ***neturi*** trukdyti sprendžiančiajai institucijai priimti sprendimo dėl prašymo.	***Turi būti paprašyta prieglobsčio prašančio asmens sutikimo.*** Prašytojo atsisakymas patvirtinti asmeninio pokalbio ataskaitos turinį ***negali*** trukdyti sprendžiančiajai institucijai priimti sprendimo dėl prašymo.

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.

Pakeitimas 40
13 straipsnio 1 dalis

1. ***Valstybės narės leidžia prieglobsčio prašytojams savo pačių sąskaita*** turėti	1. ***Prieglobsčio prašantiems asmenims turi būti suteikta*** galimybė tinkamai tartis su

galimybę tinkamai tartis su patarėjais teisės klausimais arba kitais patarėjais, kurie pagal nacionalinės teisės aktus tokiais pripažįstami ar turi leidimą užsiimti tokia veikla, dėl reikalų, susijusių su jų prieglobsčio prašymais.	patarėjais teisės klausimais arba kitais patarėjais, kurie pagal nacionalinės teisės aktus tokiais pripažįstami ar turi leidimą užsiimti tokia veikla, dėl reikalų, susijusių su jų prieglobsčio prašymais ***visos procedūros metu, įskaitant veiksmus priėmus nepalankų sprendimą.***

Justification

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

Pakeitimas 41
13 straipsnio 3 dalies 1 pastraipos įvadinė dalis

3. Valstybės narės gali numatyti savo nacionalinės teisės aktuose nemokamą teisinę pagalbą ir (arba) atstovavimą:	***3. Teisinė pagalba turi būti teikiama nemokamai arba bent jau remiantis valstybės narės teisės aktais dėl teisinės pagalbos ar finansinės paramos, atitinkančios nacionalinių teisinių ar administracinių procedūrų metu suteikiamą pagalbą, kai prašytojas neturi pakankamai lėšų už ją sumokėti pats.***

Justification

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

Pakeitimas 42
13 straipsnio 1 dalies a punktas

a) pagal V skyrių tik byloms, kurias nagrinėja teismai, bet ne tolimesnėms nacionalinės teisės aktų numatytoms apeliacijoms arba peržiūroms, įskaitant apeliacijos persvarstymą po tolimesnės apeliacijos arba peržiūros; ir (arba)	***Išbraukta.***

Justification

This exception is unacceptable according to international law.

Pakeitimas 43
13 straipsnio 3 dalies 1 pastraipos b punktas

b) tik tiems, kurie neturi pakankamai lėšų; ir/arba	***Išbraukta.***

Justification

Covered by new paragraph 3 of article 13.

Pakeitimas 44
13 straipsnio 3 dalies 1 pastraipos c punktas

c) tik teisės arba kitiems patarėjams, pagal nacionalinės teisės aktus specialiai paskirtiems padėti prieglobsčio prašytojams ir (arba) jiems atstovauti; ir/arba	***Išbraukta.***

Justification

Covered by new paragraph 3 of article 13.

Pakeitimas 45
13 straipsnio 3 dalies 1 pastraipos d punktas ir 2 pastraipa

d) tik jeigu apeliacija arba peržiūra gali būti sėkminga.	***Išbraukta.***
Valstybės narės užtikrina, kad teisinė pagalba ir (arba) atstovavimas, suteiktas remiantis d punktu, nebūtų savavališkai ribojamas.	

Justification

This exception is unacceptable according to international law.

Pakeitimas 46
13 straipsnio 4 dalis

4. Taisykles dėl tokių prašymų pateikimo ir nagrinėjimo detalių gali numatyti valstybės narės.	***Išbraukta.***

Justification

Covered by new paragraph 3 of article 13.

Pakeitimas 47
15 straipsnio 1 dalies b punktas

b) užtikrina, kad atstovui būtų suteikta galimybė pranešti nelydimam ***nepilnamečiui*** apie asmeninio pokalbio reikšmę ir galimas pasekmes ir tam tikrais atvejais, kaip pasirengti tokiam asmeniniam pokalbiui. Valstybės narės leidžia atstovui dalyvauti pokalbyje ir užduoti klausimus bei išsakyti komentarus, ***neperžengiant pokalbį vedančio asmens nustatytų ribų.***	b) užtikrina, kad atstovui būtų suteikta galimybė pranešti nelydimam ***vaikui*** apie asmeninio pokalbio reikšmę ir galimas pasekmes ir tam tikrais atvejais, kaip pasirengti tokiam asmeniniam pokalbiui. Valstybės narės leidžia atstovui dalyvauti pokalbyje ir užduoti klausimus bei išsakyti komentarus.

Justification

This restriction seems unnecessary.

Pakeitimas 48
15 straipsnio 2 dalies c punktas

c) yra arba buvo vedęs.	***Išbraukta.***

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.

Pakeitimas 49
15 straipsnio 5 a dalis (nauja)

	5a. Asmenų, tvirtinančių, kad jie yra vaikai, atžvilgiu laikinai turi būti taikomos atitinkamos nuostatos, kol bus nustatytas jų amžius.

Justification

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

Pakeitimas 50
15 straipsnio 6 dalis

6. Įgyvendindamos šio ***straipsnio*** nuostatas, valstybės narės pirmiausia turi atsižvelgti vaiko interesus.	6. Įgyvendindamos šios ***Direktyvos*** nuostatas, valstybės narės pirmiausia turi atsižvelgti vaiko interesus.

Justification

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

Pakeitimas 51
21 straipsnio 2 dalis

2. 1 dalis taip pat taikoma bet kuriai organizacijai, dirbančiai ***valstybės narės teritorijoje*** JTVPRK vardu ***pagal susitarimą su ta valstybe nare***.	2. 1 dalis taip pat taikoma bet kuriai organizacijai, dirbančiai JTVPRK vardu, ***gavus tos valstybės narės sutikimą.***

Justification

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

Pakeitimas 52
23 straipsnio 3 a dalis (nauja)

	3a. Valstybės narės taiko bendrą procedūrą ypač pažeidžiamų asmenų atžvilgiu, įskaitant nuo šeimų atskirtus vaikus ir asmenis, patyrusius traumą ar seksualinę prievartą.

Justification

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

Pakeitimas 53
23 straipsnio 4 dalies a punktas

a) prašytojas pateikdamas savo prašymą ir	a) prašytojas pateikdamas savo prašymą ir

nurodydamas faktą, iškėlė tik tokius klausimus, kurie nėra svarbūs ***arba yra mažai svarbūs*** nagrinėjant, ar jis gali būti laikomas pabėgėliu, remiantis Tarybos direktyva 2004/83/EB; arba	nurodydamas faktą, iškėlė tik tokius klausimus, kurie nėra svarbūs nagrinėjant, ar jis gali būti laikomas pabėgėliu, remiantis Tarybos direktyva 2004/83/EB; arba

Justification

The concept of minimal relevance is too vague.

Pakeitimas 54
23 straipsnio 4 dalies c punktas

c) prieglobsčio prašymas laikomas nepagrįstu, nes:	c) prieglobsčio prašymas laikomas nepagrįstu, nes:
– prašytojas atvyko iš saugios kilmės šalies, kaip apibrėžta šios direktyvos 30, ***30A*** ir 30B straipsniuose; arba	prašytojas atvyko iš saugios kilmės šalies, kaip apibrėžta šios direktyvos 30 ir 30B straipsniuose; arba
– šalis, kuri nėra valstybė narė, laikoma prašytojui saugia trečiąja šalimi, nepažeidžiant 29 straipsnio 1 dalies; arba	

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.

Pakeitimas 55
23 straipsnio 4 dalies d punktas

d) prašytojas suklaidino valdžios institucijas, pateikdamas klaidingą informaciją ar netikrus dokumentus arba nepateikdamas svarbios informacijos ar dokumentų apie savo tapatybę ir (arba) pilietybę, kurie galėjo neigiamai paveikti sprendimą; arba	d) prašytojas ***nesąžiningais ketinimais*** suklaidino valdžios institucijas, pateikdamas klaidingą informaciją ar netikrus dokumentus arba nepateikdamas svarbios informacijos ar dokumentų apie savo tapatybę ir (arba) pilietybę, kurie galėjo neigiamai paveikti sprendimą; arba

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 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	***deleted***

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	***deleted***

application made on his/her behalf and there are no facts relating to the dependant's situation justifying a separate application.

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	(a) rules requiring a ***meaningful link*** between the person seeking asylum and the

country concerned based on which it would be reasonable for that person to go to that country;	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 law, allowing an individual examination of whether the third country concerned is safe for a particular applicant ***which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.***	(c) rules, in accordance with international law, 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	4. Where the Council ***or the European Parliament request*** the Commission to

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.	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 appropriate.	8. Upon request by the Council ***or the European Parliament***, the Commission shall report to the Council and the European Parliament on whether the situation of a country on the 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 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 asylum as unfounded where the third country is designated as safe pursuant to Article 30.	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.

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

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 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.	***deleted***

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	***deleted***

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.

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

(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	***deleted***

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.

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.