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Subject: Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) [First reading]
- Preparation of the seventh informal trilogue

Introduction

In June 2011, the Commission submitted to the European Parliament and the Council a proposal for an amended recast of the Asylum Procedures Directive (11207/11). Given that the European Parliament already established a position at first reading, the aims of the ongoing informal trilogues is to find agreement in early second reading. The United Kingdom and Ireland and Denmark are not taking part in the adoption of the recast of the Asylum Procedures Directive.

State of Play

On 6 June 2012, the Permanent Representatives Committee endorsed a mandate on the basis of which the Presidency could engage in trilogues with representatives of the European Parliament and of the Commission. On 27 November, the Committee adapted this mandate.

Parties in the trilogues have succeeded in converging views on most issues. The main issues which remain outstanding and which are key to finding a global compromise concern:

- Time limits for the procedure and postponement in case of an uncertain situation in the country of origin (Article 31(3)), and
- Special rules for unaccompanied minors and victims of torture and other serious forms of violence on procedures foreseen for abusive cases (Articles 24 and 25). .

Between these two issues, the latter one (Articles 24 and 25) is the more contentious. For that reason, the Permanent Representatives Committee discussed on 5 December the most appropriate approach in relation to special rules for victims of torture and unaccompanied minors. In light of this discussion, the Presidency prepared new compromise proposals which have been examined by the Justice and Home Affairs Counsellors at their meetings on 11 and 14 December.

The Presidency also prepared compromise suggestions on other outstanding issues. These suggestions also are included in the annex.

Conclusion

In keeping with the commitment of the European Council to establish a Common European Asylum System by 2012, the Presidency aims at finding an overall compromise on the recast proposal of Asylum Procedures Directive in the seventh trilogue on 17 December. Against that background, the Presidency invites the Permanent Representatives Committee to examine the compromise suggestions which appear in Annex with a view to endorsement.

Presidency compromise package in view of seventh informal trilogue on 17 December 2012

Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast)

In light of the meeting of the Permanent Representatives Committee on 17 December 2012, the Presidency prepared a compromise package for the seventh informal trilogue. This compromise package contains the following provisions:

- A. Core issues
 - a. Article 39 and relevant recitals on safe third countries (36a, 37 and 37a)
 - b. recital 29a and Article 31.3 on time limits for concluding the examination of an asylum application and related to that, the possibilities for postponement of such decisions
 - c. Article 17 para. 3 and para.5 on interviews
 - d. Article 24.4 on applicants in need of special procedural guarantees/victims of torture and violence,
 - e. Article 25 para. 6-8 on unaccompanied minors and the respective recital 26,
 - f. Article 50 on the reference to the reporting on the application of Article 17.

- B. Other issues
 - a. Recital 16a on prioritized applications and recital 16b on accelerated procedures
 - b. New recital 42 (Dublin reference)
 - c. Article 10 para. 2 (b)
 - d. Article 13 para 2 (d) and new recital 27a (on the search of applicants)
 - e. Article 15 para. 3 (c)
 - f. Article 28 para. 1 (b) and paragraph 2 (2nd indent) on the time limit for re-opening an application considered to have been implicitly withdrawn
 - g. Article 31 para. 7 on the time limits for accelerated procedures

I. Safe third countries (Article 39 paragraph 2 and recitals 36a, 37, (37a))

Article 39 paragraph 2

2. A third country can only be considered as a safe third country for the purposes of paragraph 1 where:
- (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;
 - (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 observes its provisions, including the standards relating to effective remedies; ~~and~~

The applicant shall be allowed to challenge the application of the European safe third country concept on the grounds that the country is not safe in his/her particular circumstances.

Recitals 36a, 37 and 37a

(36a) Where Member States apply safe country concepts on a case-by-case basis or designate countries as safe by adopting lists to that effect, they should take into account, inter alia, the guidelines and operating manuals referred to in Article 12 (2) of Regulation (EU) No 439/2010 and information on country of origin and activities referred to in Article 4 of Regulation (EU) No 439/2010 including EASO Country of Origin Information report methodology as well as relevant UNHCR guidelines.

(37) In order to facilitate regular exchange of information about the national application of the safe country of origin, safe third country and European safe third country concepts **as well as a regular review by the Commission of the use of these concepts by Member States** and to prepare possible further harmonisation in the future, Member States should notify or periodically inform the Commission about the third countries to which these concepts are applied. **The Commission should regularly inform the European Parliament on the result of these reviews.**

(37a) In order to ensure correct application of the safe country concepts based on up-to-date information, Member States should conduct regular reviews of the situation in those countries based on a range of sources of information, including in particular information from other Member States, EASO, the UNHCR, the Council of Europe and other relevant international organizations. When MS become aware of a significant change in the human rights situation in a country designated by them as safe, they should ensure that a review of that situation is conducted as soon as possible and, where necessary, review the designation of that country as safe.

II. Time limits for the examination and postponement of the decision (recital 29a and Article 31.3)

Recital 29a

(29a) In determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as EASO, the UNHCR, the Council of Europe and other relevant international organisations. Member States should ensure that this postponement of conclusion of the procedure is applied in full compliance with their obligations under the Qualification Directive and Article 41 EU Charter on Fundamental Rights without prejudice to the efficiency and fairness of the procedures this directive.

Article 31.3

3. Member States may extend that time limit of six months for a period not exceeding a further **nine** months, where:

- (a) complex issues of fact and /or law are involved;
- (b) a large number of third country nationals or stateless persons **simultaneously** request international protection which makes it very difficult in practice to conclude the procedure within the six-month time-limit;
- (c) where the delay can clearly be attributed to the failure of the applicant to comply with his/her obligations under Article 13.

Exceptionally, **in duly justified circumstances**, Member States may exceed the time limits laid down in this paragraph with a maximum of three months where it is necessary in order to ensure an adequate and complete examination of the application for international protection.

Member States may, **without prejudice to Articles 13 and 18 [Qualification Directive]** postpone concluding the procedure where the determining authority cannot reasonably be expected to decide within the time limits laid down in this paragraph due to an uncertain situation in the country of origin which is expected to be temporary. **In such a case, Member States shall:**

- (a) **conduct reviews of the situation in that country of origin at least every 6 months**
- (b) **inform within a reasonable time the applicants concerned of the reasons of the postponement;**

- (c) **inform within a reasonable time the Commission of the postponement of procedures for that country of origin.**

In any event, Member States shall conclude the procedure within a maximum time limit of **twenty one** months from the lodging of the application.

III. Article 17 paragraphs 3 and 5 on interviews

17(3). Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarifications orally and/or in writing with regard to any mistranslations or misconceptions appearing in the report **or the transcript**, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. ~~Member States may provide that, when there is no recorded interview, the applicant has the opportunity to make comments and/or provide clarifications in the report.~~ To that end, Member States shall ensure that the applicant is fully informed of the **content [...] of the substantial elements** of the report **as referred to in paragraph 1** or of the **substantial elements of the transcript**, with the assistance of an interpreter if necessary. Member States shall then request ~~the acknowledgement [...] of~~ the applicant to **confirm that on** the content of the report **or the transcript correctly reflects the interview.**

Member States need not request the applicant's **confirmation that acknowledgement [...] on** the content of the report **or the transcript correctly reflects the interview, nor allow for the opportunity to make comments and/or provide clarifications to the report or the transcript**, if the interview is recorded in accordance with paragraph 2 and if the recording is admissible as evidence in procedures referred to in Chapter V.

17(5) Applicants **and their legal adviser or other counsellor, as defined in Article 23**, shall not be denied access to the report **or the transcript** and, where applicable, the recording ~~or transcript thereof~~, before the determining authority takes a decision.

Where Member States provide for both a transcript and a recording of the interview, Member States need not provide access to the recording in procedures at first instance referred to in Chapter III. In such cases, they shall provide access to the recording in procedures referred to in Chapter V.

Without prejudice to paragraph 3, where ~~Where~~ the application is determined in the framework provided for in Article 31(6), Member States may provide that access to the report or the transcript and where applicable, the recording, is granted at the same time as the decision is made.

IV. Articles on vulnerable persons (24.4 on victims of torture and violence and Article 25 para. 6-8 on unaccompanied minors and the respective recitals 26 and 28a)

- (26) The best interests of the child should be a primary consideration of Member States when implementing this Directive, in line with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child. **In assessing the best interest of the child, Member States should in particular take due account of the minor's wellbeing and social development, including his/her background and give due weight to the views of the minor in accordance with his/her age and maturity.**
- (28a) **In order to preserve the integrity of asylum systems of the Member States and while guaranteeing unrestricted access to the asylum procedure for persons seeking international protection, it is necessary to ensure that Member States have at their disposal the necessary procedural tools to prevent and respond to abusive claims.**

Article 24: Applicants in need of special procedural guarantees

1. Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.
2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of the Directive (...) (Reception Conditions) and need not take the form of an administrative procedure.
3. Member States shall ensure that where applicants have been identified to be in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.
4. **In cases where the determining authority considers, on the basis of a consistent set of evidence, as a result of the assessment in paragraph 1, that an applicant has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence wherefrom special procedural needs result and where there is a link between the torture or violence suffered and the grounds for requesting international protection, Article 31(6) and Article 32(2) shall not apply, unless Member States provide for free legal assistance and representation at first instance for this category of applicants.**
5. Member States shall ensure that these special procedural needs, including the derogation referred to in paragraph 4, are also addressed, in accordance with this Directive, if they become apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25 paragraphs 6-8 (paragraphs 1 - 5 of Council Position remain the same)

6. Member States may determine the applicant's age in accordance with paragraph 5 in the framework of the procedures referred to in Articles 31(6) or 43.
7. Where Member States identify an applicant as an unaccompanied minor, they may:
 - apply or continue to apply the procedures referred to in Articles 31(6) or 43 if the applicant is from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive;
 - apply or continue to apply the procedures referred to in Articles 31(6) or 43 if the applicant has submitted an application which is considered unfounded in accordance with Article 32(2);
 - consider the application as inadmissible in accordance with Article 33(2)(c) if a country which is not a Member State is considered as a safe third country for the applicant pursuant to Article 38;

In all other cases, Member States shall only apply Articles 31(6) and/or 43 in exceptional cases.

8. The best interests of the child shall be a primary consideration for Member States when implementing this Article.

V. Article 50 on reporting

2nd subparagraph

As part of the first report, the Commission shall also report in particular on the application of Article 17 and the various tools used in relation to the reporting of the personal interview.

VI. Other provisions

Recital (16a) on prioritized applications and (recital 16b) on accelerated procedures

- (16a) In order to shorten the overall duration of the asylum procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees.
- (16b) In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter reasonable time limits for certain procedural steps, without prejudice to an adequate and complete examination and to the applicant's effective access to basic principles and guarantees provided for in this Directive.

New recital 42

This Directive should apply to applicants to whom the Dublin Regulation applies, in addition and without prejudice to the provisions of that Regulation.

Article 10(2)(b)

....precise and up-to-date information is obtained from various sources, such as the European Asylum Support Office, the United Nations High Commissioner for Refugees (UNHCR) **and relevant international human rights organizations**, as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions.

New recital related to Article 13(2)(d)

When Member States resort in the framework of processing of the application to a search of the applicant, this search should be carried by a person of the same sex . This should be without prejudice to a search carried out, for security reasons on the basis of national law .

Article 13(2)(d)

13 (2)(d) the competent authorities may search the applicant and the items he/she carries with him/her ⇒ **Without prejudice to any search carried out for security reasons ~~Whenever possible,~~** a search of the applicant's **person in the application of this Directive** shall be **carried out by a person of the same sex in full respect of the principles of human dignity and of physical and mental integrity** ;

Article 15(3)(c)

15 (3)(c) ~~(c)~~ select **an** **interpreter** who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication ~~shall~~ ~~need not necessarily~~ take place in the language preferred by the applicant ~~for asylum~~ ~~unless~~ ~~if~~ there is another language which he/she ~~may reasonably be supposed to~~ understands and in which he/she is able to communicate **clearly**.
⇒ Wherever possible, Member States shall provide an interpreter of the same sex if the applicant **concerned** so requests **unless the determining authority has reasons to believe deems that** **the request is based on discriminatory grounds which are not related to difficulties on the part of the applicant to present the grounds of his/her application in a comprehensive manner** ;

Article 28(1)(b)

28.1.(b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time, or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate **unless the applicant demonstrates that this was due to circumstances beyond his/her control.**

Article 28(2) 2nd indent

Member States may provide for a time limit of at least **9 months** after which the applicant's case can no longer be re-opened or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41. Member States may provide that the applicant's case may be reopened only once.

Article 31(7)

31.7. Member States **shall** lay down time limits for the adoption of a decision in the procedure at first instance pursuant to paragraph 6. Those time limits shall be reasonable.

Without prejudice to Article 31(3), Member States may exceed those time limits where it is necessary in order to ensure an adequate and complete examination of the application for international protection.