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## **REPORT**

on the proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

(COM(2000) 578 – C5-0705/2000 – 2000/0238(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Graham R. Watson

### ***Symbols for procedures***

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

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

### ***Amendments to a legislative text***

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

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## PROCEDURAL PAGE

By letter of 11 December 2000 the Council consulted Parliament, pursuant to Article 67 and Article 63(1)(d) of the EC Treaty, on the proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000) 578 - 2000/0238 (CNS)).

At the sitting of 15 December 2000 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgets, the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0705/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Ingo Schmitt rapporteur at its meeting of 10 October 2000.

It considered the Commission proposal and draft report at its meetings of 23 and 24 January, 20 June, 11 July and 28 August 2001.

At the last meeting it adopted the draft legislative resolution by 20 votes to 13, with 1 abstention. However, following the vote on the legislative amendments, the rapporteur asked for his name to be withdrawn from the final report. The committee therefore decided to table the report under the name of its chairman, Mr Graham R. Watson.

The following were present for the vote: Graham R. Watson, chairman and rapporteur; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Adeline Hazan), Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Andrew Nicholas Duff (for Baroness Sarah Ludford pursuant to Rule 153(2)), Pernille Frahm, Ewa Hedkvist Petersen (for Martin Schulz), Jorge Salvador Hernández Mollar, Ruth Hieronymi (for Thierry Cornillet pursuant to Rule 153(2)), Anna Karamanou, Margot Keßler, Eva Klamt, Jean Lambert (for Alima Boumediene-Thiery), Lucio Manisco (for Fodé Sylla), Juan Andrés Naranjo Escobar (for Marcello Dell'Utri), Hartmut Nassauer, Elena Ornella Paciotti, Neil Parish (for Timothy Kirkhope pursuant to Rule 153(2)), Paolo Pastorelli, Hubert Pirker, Ingo Schmitt (for Daniel J. Hannan), Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Anne E.M. Van Lancker (for Sérgio Sousa Pinto), Gianni Vattimo, Christian Ulrik von Boetticher and Jan-Kees Wiebenga.

The opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Women's Rights and Equal Opportunities are attached. The Committee on Budgets decided on 23 November 2000 that it would not deliver an opinion; the Committee on Legal Affairs and the Internal Market decided on 22 November 2000 that it would not deliver an opinion.

The report was tabled on 31 August 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

### Proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000) 578 – C5-0705/2000 – 2000/0238(CNS))

The proposal is amended as follows:

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
Amendment 1	
Title	
Council Directive on minimum standards on procedures in Member States for <b>granting</b> and withdrawing refugee status.	Council Directive on minimum standards on procedures in Member States for <b>recognising</b> and withdrawing refugee status.

#### *Justification*

*The UNHCR handbook makes clear that States do not grant refugee status but they recognise it.*

#### Amendment 2 Recital 9

(9) On the other hand, in the interests of a system of swift recognition of those applicants in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, provision should be made for Member States to operate specific procedures for processing applications for which it is not necessary to consider the substance and those that are suspected to be manifestly unfounded

(9) On the other hand, in the interests of a system of swift recognition of those applicants in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, provision should be made for Member States to operate specific procedures for processing applications for which it is not necessary to consider the substance and those that are suspected to be manifestly unfounded, ***in accordance with criteria which have been clearly laid down in advance.***

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<sup>1</sup> OJ C 62, 27.2.2001, p. 231.

*Justification*

*Precise rules must be laid down to ensure that applications are not rejected arbitrarily.*

Amendment 3

Recital(10)

***(10) Member States are at liberty to decide whether or not to operate these procedures for inadmissible and manifestly unfounded cases, but if they do, they should abide by the common standards laid down in this Directive as regards the definition of these cases and the other requirements to apply the procedures, including time-limits for the decision-making process.*** **Delete**

*Justification*

*This recital consists exclusively of a repetition or summary of the substantive text of the proposal for a directive. There is no need for this, particularly as the combination of this summarisation, on the one hand, and imprecise wording on the other give rise to confusion and misunderstandings.*

Amendment 4

Recital 11

(11) It is essential that these procedures contain the necessary safeguards to ensure that earlier doubts can be set aside so that those who are in need of protection can still be correctly identified. In so far as is possible, they should therefore contain, in principle, the same minimum procedural guarantees and requirements regarding the decision-making process as regular procedures. ***However, given the nature of the cases involved, decision making can and should be prioritised in both instances and further appeal may be restricted.***

(11) It is essential that these procedures contain the necessary safeguards to ensure that earlier doubts can be set aside so that those who are in need of protection can still be correctly identified. In so far as is possible, they should therefore contain, in principle, the same minimum procedural guarantees and requirements regarding the decision-making process as regular procedures

*Justification*

*It is not clear why the minimum guarantees should be confined to certain procedures.*

Amendment 5  
Recital 12

(12) As minimum procedural guarantees for all applicants in all procedures should be considered, *inter alia*, the right to a personal interview before a decision is taken, the opportunity to communicate with the UNHCR, the opportunity to contact organisations or persons that provide legal assistance, the right to a written decision within the time-limits laid down **and** the right of the applicant to be informed at decisive moments in the course of his procedure, in a language he understands, of his legal position in order to be able to consider possible next steps.

(12) As minimum procedural guarantees for all applicants in all procedures should be considered, *inter alia*, **the right of access to the asylum procedure**, the right to a personal interview before a decision is taken, the opportunity to communicate with the UNHCR, the opportunity to contact organisations or persons that provide legal assistance **at all stages of the procedure**, the right to a written decision within the time-limits laid down, the right of the applicant to be informed at decisive moments in the course of his procedure, in a language he understands, of his legal position in order to be able to consider possible next steps **and the right to remain in the territory of the receiving country until a final decision has been taken.**

*Justification*

*On 15 June 2000 the European Parliament delivered its opinion on the Commission's working document 'Towards common standards for asylum procedures', by way of preparation for this directive. Two new rights are added, in accordance with that opinion.*

Amendment 6  
Recital 13

(13) In addition, specific procedural guarantees for persons with special needs, such as unaccompanied minors, should be laid down.

(13) In addition, specific procedural guarantees for persons with special needs, such as, **for example**, unaccompanied minors, should be laid down.

*Justification*

*It should also be possible to establish specific procedures for other special needs. The text must not lend itself to ambiguities of interpretation.*

Amendment 7  
Recital 15

(15) In order to enable every applicant to effectively pursue his case with the competent authorities of the Member States, the right to appeal should entail for all applicants in all procedures the opportunity for a review on both facts and points of law and should **as a rule** suspend enforcement of an adverse decision.

(15) In order to enable every applicant to effectively pursue his case with the competent authorities of the Member States, the right to appeal should entail for all applicants in all procedures the opportunity for a review on both facts and points of law and should suspend enforcement of an adverse decision.

*Justification*

*The text must not allow scope for exceptions which might seriously compromise the rights of asylum-seekers.*

Amendment 8  
Recital 19

(19) The implementation of this Directive should be evaluated at regular intervals.

(19) The implementation of this Directive should be evaluated at regular intervals, **not exceeding 2 years**.

*Justification*

*It is necessary to lay down clearly deadlines which must be complied with in order to ensure that an evaluation of the implementation of the directive cannot be postponed indefinitely.*

Amendment 9  
Recital 20 a (new)

:

***20 a. The Union should take care that its assistance programmes for the candidate countries for accession to the EU cover sufficient education and training activities in the fields both of asylum and immigration, and police and judicial co-operation in order for them to comply with this directive.***



*Justification*

*The successful implementation of this legislation requires a high capability of public administration in both Member States and candidate countries.*

Amendment 10  
Article 1

The purpose of this Directive is to establish minimum standards on procedures in Member States for **granting** and withdrawing refugee status.

The purpose of this Directive is to establish minimum standards on procedures in Member States for **recognising** and withdrawing refugee status.

*Justification*

*The UNHCR handbook makes clear that States do not grant refugee status but they recognise it.*

Amendment 11  
Article 1a (new)

***The European Union is committed to respecting all the existing international obligations of Member States as well as the Charter of Fundamental Rights of the European Union, especially Article 18.***

*Justification*

*The necessity to respect all existing international law commitments needs to be underscored, as well as making a specific reference to the Charter of Fundamental Rights which was drafted very much in the context of the future development of EU asylum and immigration policy.*

Amendment 12  
Article 2, paragraph (b)

(b) “Application for asylum” means a request whereby a person asks for protection from a Member State and which can be understood to be on the grounds that he is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any application for protection is presumed

(b) “Application for asylum” means a request whereby a person asks for protection from a Member State and which can be understood to be on the grounds that he is a refugee within the meaning of Article 1(A) of the Geneva Convention ***or within the meaning of the legislation of***

to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;

***the Member State where the latter provides for further cases of recognition of refugee status.*** Any application for protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;

#### *Justification*

*Where Member States operate broader criteria (than the Geneva Convention) for recognition of refugee status, it would be nonsensical to confine the scope of the Directive to certain refugees.*

#### Amendment 13 Article 2, paragraph (i)

(i) ***"Refugee Status"*** means the ***status*** granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;

(i) ***"Asylum"*** means the ***protection*** granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;

#### *Justification*

*The draft article mixes the two notions of refugee status and asylum. A person who fulfils the criteria of Article 1 of the 1951 Convention is a refugee irrespective of whether he or she has been admitted to a state or not; whereas 'asylum' is the protection extended by a state to a person in need of it.*

#### Amendment 14 Article 2, paragraph (k)a (new)

***(k)a 'Cessation of refugee status' means the decision by a determining authority declaring that the refugee status of a person has come to an end on the basis of Article 1(C) of the Geneva Convention;***

### *Justification*

*A person ceases to be a refugee as soon as any of the circumstances envisaged in Article 1(C) of the 1951 Convention become applicable. This is different from withdrawal of asylum which does not necessarily result in the termination of refugee status.*

### Amendment 15 Article 2, paragraph (l)

(l) "**Withdrawal of *refugee status***" means the decision by a determining authority to ***withdraw the refugee status of a person*** on the basis of ***Article 1 (C) of the Geneva Convention*** or Article 33(2) of the Geneva Convention;

"Withdrawal of ***asylum***" means the decision by a determining authority to ***put an end to asylum*** on the basis of ***Articles 32 or 33(2)*** of the Geneva Convention;

### *Justification*

*Asylum may be determined (or withdrawn), and the refugee may be expelled from the country. Nevertheless, the application of Article 32 or of Article 33(2) does not necessarily bring refugee status to an end. A refugee who is expelled from one country on grounds of national security or public order may continue to enjoy refugee status in a third country which is willing to receive him or her.*

### Amendment 16 Article 3, paragraph 3

3. Member States may decide to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.

3. Member States may decide to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees, ***particularly by extending rights of asylum in such a way that they can take account of the development of new forms of persecution.***

*Justification*

*The development of new forms of persecution since the signature of the Geneva Convention, for example by terrorist groups and fundamentalist religious fanatics and on account of the existence of ethnic wars within countries, ought now to make it possible to reinforce the Geneva Convention by introducing territorial asylum and, in the same way, granting asylum on health grounds following the emergence of an international tragedy such as AIDS, which has particularly affected Africa.*

Amendment 17  
Article 3, paragraph 3a (new)

***3a. This directive shall not limit in any way Member States' obligations pursuant to the European Convention on Human Rights, particularly Articles 3, 5 and 8 of that Convention.***

*Justification*

*It is essential that the Directive expressly state that it is without prejudice to the ECHR.*

Amendment 18  
Article 3, paragraph 3b (new)

***3b. This directive shall not affect the prerogative of Member States to adopt or retain more favourable provisions concerning procedures for recognising and withdrawing refugee status.***

*Justification*

*The Directive only sets minimum standards. It should expressly refer to Member States' ability to set higher standards should they so choose.*

Amendment 19  
Article 4, paragraph 1a (new)

***1a. Member States' obligations pursuant to this Directive apply as soon as a person at their border or within their territory gives an indication to their authority which suggests that he or she may be in need of protection.***

*Justification*

*This is an amplification of Article 4(1) which states that there is no need for any prior formality. It should be recognised that individuals do not always apply for asylum explicitly but rather indicate their fears. The directive should make clear that the process of determining an asylum claim should begin at this point.*

Amendment 20  
Article 4a (new)

***4a. Without prejudice to Member States' prerogative to control immigration and entry to their territory, they must ensure that such procedures do not hinder access to asylum procedures and undermine Member States' international commitments to offering protection.***

*Justification*

*Member States must ensure and demonstrate adequately that asylum-seekers have effective access to their asylum procedures and any restrictions on entry, such as visa requirements, the fight against forged documents, carriers' sanctions, the increase in the effectiveness of immigration liaison officers, the conclusion of readmission agreements or other similar restrictive measures, do not obstruct this access in practice.*

Amendment 21  
Article 5

***No Member State shall expel or return an applicant for asylum in any manner whatsoever to the frontier of the territories where his or her life or freedom would be threatened on account of his or her race or religion, nationality, membership of a particular social group or political opinion or where he or she faces a real risk of torture or inhuman or degrading treatment.***

***No Member State shall expel or return an asylum applicant to a third state which might effect expulsion or return.***

Applicants for asylum shall be allowed to remain ***at the border*** or on the territory of

Applicants for asylum shall be allowed to remain on the territory of the Member State

the Member State in which the application for asylum has been made or is being examined ***as long as it has not been decided on.***

in which the application for asylum has been made or is being examined ***until a final decision has been reached and the appeals procedure exhausted.***

*Justification*

*The non-refoulement rule 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 in this text, at this point, under basic principles and guarantees.*

*In addition, according to the wording of the Commission's proposal an applicant for asylum could be expelled after an initial negative decision at the first determining stage.*

*Such guarantees of non-refoulement are essential especially in relation to the accelerated procedure which, according to the Commission's proposal at present, contains fewer safeguards in comparison to the 'regular procedure'.*

*In paragraph 3 of its resolution of 15 June 2000, the EP called for acknowledgement of the right to remain in the country until a final decision has been taken. If the EP wishes to remain consistent with its own decisions, this must be laid down in the Directive too.*

Amendment 22  
Article 6a (new)

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

*Justification*

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

Amendment 23  
Article 7, paragraph (a)

(a) They must be informed, prior to

(a) They must be informed, prior to

examination of their application for asylum, of the procedure to be followed and of their rights and obligations during the procedure, in a language which they understand.

examination of their application for asylum, of the procedure to be followed and of their rights and obligations during the procedure, in a language which they understand; ***this information may also be conveyed by means of an information sheet.***

*Justification*

*The Member who tabled the amendment supplied no justification.*

Amendment 24  
Article 7, paragraph (b)

***(b) They must be given the services of an interpreter, whenever necessary, for submitting their case to the competent authorities. These services must be paid for out of public funds, if the interpreter is called upon by the competent authorities.***

***(b) The determining body will assign an interpreter upon request by the applicant for asylum who will assist in submitting his/her case to the competent authorities and otherwise support the applicant in matters relating to both the regular and the accelerated procedure.***

These services must be paid for out of public funds.

*Justification*

*The assistance of an interpreter should be provided at all stages of the procedure, especially in initial interviews where a factual basis is first obtained. Correct information and efficient procedure at this stage should assist in limiting the number of appeals and alleviating some of the burden on the appeal authorities.*

*As regards the accelerated procedure there should be an interpreter present.*

Amendment 25  
Article 7, paragraph (c)

(c) they must be given the opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR) or with other organisations that are working on behalf of the UNHCR at all stages of the procedure.

(c) they must be given the opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR) or with other ***refugee*** organisations that are working on behalf of the UNHCR ***or independently*** at all stages of the procedure.

### *Justification*

*Other NGOs work with asylum seekers, not just those under the auspices of the UNHCR. To limit this would be to deprive asylum seekers of vital assistance and support.*

#### Amendment 26 Article 7, paragraph (d)

(d) **they** must be communicated decisions on applications for asylum in writing. If an application is rejected, the reasons for the decision in fact and in law shall be stated and information given on the **possibility for review of the decision and, where applicable, on** how to file an appeal and the relevant time-limits.

(d) **an asylum applicant, and their legal advisor,** must be communicated **specific and detailed reasons for** decisions on applications for asylum in writing **and if necessary orally, in a language which they understand, and if necessary in another appropriate manner.** If an application is rejected, the reasons for the decision in fact and in law shall be stated and information given on **the right to appeal, including** how to file an appeal and the relevant time-limits.

### *Justification*

*This is a fundamental right, and one which the directive recognises at all other stages in the procedure. It is therefore logical to make good any shortcomings relating to the comprehensibility of the language used. It is necessary also to provide for any decision to be communicated orally in case the asylum seeker does not know how to read or write, in order to ensure that all asylum seekers have access to communication which they can understand. Asylum seekers must always be given a formal document, but despite this requirement, it is necessary to make sure that the decision is fully understood, which can also be achieved other than in writing.*

*An applicant for asylum should be fully aware of the reason for the negative decision which accordingly provides for clarity when filing grounds of appeal.*

*Reference should be made to the right of appeal following the provisions in Article 32.*

*To inform a legal advisor (if they have one) secures the legal rights of the applicant. This amendment must be seen in the light of the other amendments dealing with rights to legal assistance.*

#### Amendment 27 Article 7, paragraph (e)

(e) in the event of an adverse decision, they

(e) in the event of an adverse decision,



must be informed of the main purport of the decision and ***the possibility for review of the decision and, where applicable, of how to request an appeal*** and the relevant time-limits, in a language which they understand.

they, ***and their legal advisor*** must be informed of the main purport of the decision and ***of the right to appeal, including how to file an appeal*** and the relevant time-limits, in a language which they understand.

*Justification*

*Reference should be made to the right of appeal following the provisions in Article 32. To inform a legal advisor (if they have one) helps to secure the legal rights of the applicant.*

Amendment 28  
Article 7(f) a (new)

***(f) a. Female applicants shall be informed of their right to ask for a female interpreter and/or official during the whole procedure.***

*Justification:*

*It is essential that specialist training is provided for those examining applications from certain categories of applicants who can be expected to have extra difficulties describing the way they are persecuted.*

*The United Nations Division for the advancement of women stated in November 1997 that all persons involved in refugee determination must be trained with respect to the impact of trauma, cultural difference and sex difference on the willingness of women to disclose gender-based persecution.*

Amendment 29  
Article 8, paragraph 1

1. Before ***a decision is taken by the determining authority***, the applicant for asylum ***must be given the opportunity of a personal interview on the admissibility and/or substance of his application for asylum*** with an official ***competent*** under national law.

1. Before ***the determining authority takes a decision on the case***, the applicant for asylum ***has a right to a personal interview on the admissibility of the application where his or her application is subject to the admissibility procedure, and a right to a personal interview on the substance of the application for asylum, during the regular and accelerated procedures***, with an official ***fully qualified*** under national law ***in the field of asylum and refugee matters.***

### *Justification*

*The applicant must be entitled to a personal interview no matter which procedure his claim is following. A personal interview is imperative to ascertain the facts and assess the case on an individual basis. In addition it must be stressed that the official must be competent in refugee and asylum matters. Such procedural safeguards now should allow for competent initial decision making and therefore alleviate pressures in the appeals system.*

#### Amendment 30 Article 8, paragraph 2

2. At the end of a personal interview as referred to in paragraph 1, the official must at least read out a transcript to the interviewee in order to be able to request his agreement with its contents.

2. At the end of a personal interview as referred to in paragraph 1, the official must at least read out a transcript to the interviewee in order to be able to request his agreement with its contents. ***The applicant and/or legal advisor must be given an agreed finalised copy of the transcript.***

### *Justification*

*The applicant and/or his advisor must be allowed to keep such a document in the interests of legal clarity and for use in an appeals procedure if necessary.*

#### Amendment 31 Article 8, paragraph 6

6. In the regular procedure referred to in Articles 24, 25 and 26, hereinafter "the regular procedure", each applicant for asylum must be given an opportunity, within a reasonable time-limit, to consult the transcript of a personal interview on the substance of his application for asylum and to make comments on it.

6. In the regular procedure referred to in Articles 24, 25 and 26, hereinafter "the regular procedure", ***and in the accelerated procedure referred to in Articles 27, 28, 29, 30, and 31, hereinafter referred to as the 'accelerated procedure'***, each applicant for asylum must be given an opportunity, within a reasonable time-limit, to consult the transcript of a personal interview on the substance of his application for asylum and to make comments on it. ***The applicant and/or legal advisor must be given an agreed finalised copy.***

*Justification*

*There should be no distinction between the rights guaranteed under the regular procedure and the accelerated procedure.*

*The applicant and/or his advisor must be allowed to keep such a document in the interests of legal clarity and for use in appeals procedure if necessary.*

Amendment 32

Article 8 (7)

7. Member States shall ensure that an official and an interpreter of a sex chosen by the interviewee is ***involved in*** the personal interview on the substance of the application for asylum if there are reasons to believe that the person concerned finds it otherwise difficult to present the grounds for his application in a comprehensive manner owing to the ***experiences*** he has undergone or ***to*** his cultural origin.

7. Member States shall ensure that an official and/or an interpreter of a sex chosen by the interviewee is ***conducting - and present during***, the personal interview on the substance of the application for asylum ***on her/his request or*** if there are ***any*** reasons to believe that the person concerned finds it otherwise difficult to present the grounds for ***her/his*** application in a comprehensive manner owing to the ***difficulties she/he*** has undergone or ***her/his*** cultural origin.

*Justification:*

*Every applicant should be able to choose the sex of the official and/or interpreter.*

Amendment 33

Article 9, paragraph 1

1. ***Member States shall ensure that all*** applicants for asylum have the opportunity to contact in an effective manner organisations or persons that provide legal assistance at all stages of the procedure.

1. Applicants for asylum ***shall be given the*** opportunity to contact in an effective manner organisations or persons that provide legal assistance at all stages of the procedure. ***A list of such organisations and/or persons, including specialised non-governmental organisations, will be provided.***

### *Justification*

*The first part of the amendment is an editorial improvement.*

*In certain cases forms of advice or help other than legal advice are needed to ensure that an applicant is capable of defending his/her case during the procedures; this would apply, for example, to traumatised, tortured or abused applicants.*

*Applicants are often not aware of the existence of such organisations and persons.*

### Amendment 34 Article 9, paragraph 2

2. In closed areas designated for the examination of applications for asylum, Member States may regulate the access of organisations providing legal assistance, provided such rules either serve the legitimate purpose of ensuring the quality of legal assistance or are objectively necessary to ensure an efficient examination in accordance with the national rules pertaining to the procedure in these areas and do not ***render access impossible***.

2. In closed areas designated for the examination of applications for asylum, Member States may regulate the access of organisations providing legal assistance provided such rules either serve the legitimate purpose of ensuring the quality of legal assistance or are objectively necessary to ensure an efficient examination in accordance with the national rules pertaining to the procedure in these areas and do not ***result in the effective annulment or severe curtailment of the right to have access to legal assistance***.

### *Justification*

*Restrictions on access should not be vague or open-ended. Any restriction on access should be strictly necessary and never ultimately fail to provide an applicant with legal assistance.*

### Amendment 35 Article 9 (3)

***In the regular procedure***, the applicant's legal adviser or counsellor shall have the opportunity to be present during ***the*** personal interview ***on the substance of the application for asylum. Member States shall provide for rules on the presence of legal advisers or counsellors at all other***

***Throughout all stages of the procedure***, the applicant's legal adviser or counsellor shall have the opportunity to be present during ***any*** personal interview ***and to comment and ask questions***.

***interviews in the asylum procedure, without prejudice to this paragraph and Articles 8(5) and 10(1)(b).***

*Justification*

*There should be no distinction between each procedure when guaranteeing the applicant safeguards and rights. Important to specify the legal advisor may be present and be able to ask questions as this will allow for any possible legal problems to be determined at an early stage and therefore allow for clear initial decision making and thus alleviate the burden on the appeal authorities.*

Amendment 36  
Article 9, paragraph 4

4. Member States shall ensure that all applicants for asylum have the right to ***a legal adviser or counsellor to assist them after an adverse decision by a determining authority.*** The assistance must be given free of charge ***at this stage of the procedure*** if the applicant has no adequate means to pay for it himself.

4. Member States shall ensure that all applicants for asylum have the right to ***qualified independent legal advice and representation at all stages of the asylum application procedure, including the preparation and submission of claims and during any appeals procedure.*** The assistance must be given free of charge ***or at least in accordance with Member States' rules on legal aid/ financial assistance*** if the applicant has no adequate means to pay for it himself.

*Justification*

*To limit the right to legal assistance just to the case of an adverse decision is to limit any guarantees given to the asylum seeker. Legal advice at an early stage will ensure a better initial decision and thus alleviate the burden on appeals authorities.*

Amendment 37  
Article 10, paragraph 1, points (a) and (b)

(a) A legal guardian ***or adviser*** must be appointed as soon as possible ***to assist and represent them with respect to the examination of the application;***

(a) A legal guardian must be appointed, ***by the relevant authority competent to do so,*** as soon as possible to ***instruct the legal advisor and ensure that throughout the proceedings the best interests of the child are maintained.***

(b) **The appointed legal guardian or adviser must be** given the opportunity to help prepare them for **the personal interview on the admissibility and/or the substance of the application for asylum.** Member States shall allow the legal **guardian or adviser** of an unaccompanied minor **to be present at the personal interview and** to ask questions or make comments.

**(b) A legal advisor must be appointed to represent the child thorough all stages of the procedure and must be** given the opportunity to help prepare them for, **and attend, any personal interview undertaken throughout the proceedings.** Member States shall allow the legal adviser of an unaccompanied minor to ask questions or make comments.

#### *Justification*

*This guarantees better protection of minors allowing both for representation (guardian ad litem) and legal assistance.*

#### Amendment 38

Article 10, paragraph 3, subparagraph (b) and subparagraph (b) a (new)

(b) Unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they understand, about the possibility of age determination by a medical examination.

(b) Unaccompanied minors are informed prior to the examination of their application for asylum, **in the presence of their legal guardian and/or legal advisor,** and in a language which they understand, about the possibility of age determination by a medical examination.

**(b)a. Where the age of a minor is in doubt they shall be presumed to be under the age of majority until such an assumption is rebutted.**

#### *Justification*

*A legal guardian or legal advisor should be present to help the child.*

*The child should be given the benefit of the doubt as to their age.*

#### Amendment 39

Article 11, paragraph 1

1. Member States shall not hold an applicant

1. Member States shall not hold an applicant

for asylum in detention for the sole reason that his application for asylum needs to be examined. **However**, Member States may hold an applicant for asylum in detention **for the purpose of taking a decision** in the following cases, in accordance with a procedure prescribed by national law and only for as long as is necessary:

**(a) to ascertain or verify his identity or nationality;**

for asylum in detention for the sole reason that his application for asylum needs to be examined. Member States may **only** hold an applicant for asylum in detention in the following cases, **if appropriate**, in accordance with a procedure prescribed by national law and only for as long as is necessary:

**(a) Delete**

*Justification*

*The wording of (a) is too general, and the matter is covered by (b).*

Amendment 40

Article 11, paragraph 1, subparagraphs (c) and (d)

**(c) to determine the elements on which his application for asylum is based which in other circumstances could be lost;**

**Delete**

**(d) in the context of a procedure, to decide on his right to enter the territory.**

**Delete**

*Justification*

*Detention of asylum-seekers should normally be avoided. It may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim is based; to deal with cases where refugees or asylum-seekers have destroyed documents or have used fraudulent documents; to protect national security or public order.*

*None of the reasons given is sufficient to justify detention. In particular, subparagraph (d) contradicts the first subparagraph of point 1 of the same article.*

Amendment 41

Article 11, paragraph 1, subparagraphs (d) a and (d) b (new)

*(da) to ensure the application of a removal order against an applicant whose claim has been definitively rejected on condition that all appeals procedures have been exhausted and there are no humanitarian grounds on which to grant a permit to stay.*

*(db) to protect national security and public order where there is evidence to show that the asylum applicant is likely to pose a risk to such principles.*

#### *Justification*

*The additional grounds indicated here cover situations justifying detention.*

#### Amendment 42 Article 11, paragraph 2

2. Member States shall provide by law *for the possibility of an initial review and subsequent regular reviews of the order for detention of applicants for asylum detained pursuant to paragraph 1.*

2. *In compliance with Article 5 and 6 of the ECHR* Member States shall provide by law *for a prompt and mandatory initial review and subsequent regular reviews of the order for detention.*

*This shall be before a duly empowered impartial and independent body in which the detainee can make a full challenge to the legality and grounds for detention. The detainee shall be provided with legal assistance pursuant to Article 9 of this directive.*

*The result of such reviews shall be communicated promptly to the detainee and/or his legal advisor in a language which he understands.*



*Justification*

*In order to guarantee the independence of the review, the decision to suspend or extend detention should be taken by a body which is independent of the authority responsible for the detention.*

*This strengthens the safeguards for the applicant notably in order to respect Articles 5 and 6 ECHR.*

Amendment 43  
Article 11, paragraph 2a (new)

***2a. Those subject to a detention order pursuant to paragraph 1 shall be detained separately from convicted criminals or prisoners on remand and Member States shall ensure that detention is humane and respects fundamental rights of the individual, including access to medical treatment, and exercise of their religion.***

*Justification*

*It is essential that if an individual is detained his fundamental rights are not compromised and that he is not treated as a criminal.*

Amendment 44  
Article 11a (new)

***Unaccompanied minors seeking asylum should not be kept in detention solely for reasons of immigration control. Measures restricting the freedom of movement of such minors should only be taken if, under all circumstances, they clearly appear to be in their best interests.***

*Justification*

*Detention of asylum-seekers should normally be avoided and, in particular unaccompanied*

*minors seeking asylum should never be detained solely on account of illegal entry or presence.*

Amendment 45  
Article 11 b (new)

***11 b. The procedures should also contribute to the improvement of the Union's international relations by being as clear and transparent as possible in order to facilitate their interpretation by third countries and their citizens. Moreover, this legislation sets the standards that need to be met by all candidate countries.***

*Justification*

*Self-explanatory*

Amendment 46  
Article 13 (1)(c)

(c) the right to ask advice, whenever necessary, from experts on particular issues, for example, ***a*** medical ***or*** cultural ***issue***.

(c) the right to ask advice, whenever necessary, from experts on particular issues, for example ***on*** medical, cultural ***or*** ***gender related issues***.

*Justification:*

*Gender related persecution is diverse and often complex. Specialised advice should be available.*

Amendment 47  
Article 13, paragraph 2

2. Upon request of their reviewing bodies, Member States shall grant them the same treatment as determining authorities with respect to access to the part of the information mentioned at paragraph 1(b) that is considered public information. Member States ***may decide to*** grant them access to the part of the information

2. Upon request of their reviewing bodies, Member States shall grant them the same treatment as determining authorities with respect to access to the part of the information mentioned at paragraph 1(b) that is considered public information. Member States ***shall*** grant them access to the part of the information mentioned at

mentioned at paragraph 1(b) that is considered confidential information, if they abide by the same rules as the determining authorities with respect to the confidentiality of this information.

paragraph 1(b) that is considered confidential information, if they abide by the same rules as the determining authorities with respect to the confidentiality of this information.

*Justification*

*As the information in question is confidential, States must help reviewing bodies in their difficult task.*

Amendment 48

Article 14, paragraph 1, subparagraph (b)

(b) personnel interviewing applicants for asylum have received the necessary **basic** training *for this purpose*;

(b) personnel interviewing applicants for asylum have received the necessary training *with regard to interview techniques, international refugee law, national asylum law, relevant human rights legislation, European legislation on asylum and information about the countries of origin and receive regular in-service training in these fields*;

*Justification*

*It is not enough to give the officials concerned general basic training: they must be properly trained for their task. It is necessary to bring the directive into line with the provisions of Council of Europe Recommendation 98/15. Moreover, in Paragraph 8 of its resolution of 15 June 2000, the European Parliament calls for sufficient numbers of suitably qualified personnel to be made available.*

Amendment 49

Article 14, paragraph 1, subparagraph (c)

(c) personnel interviewing persons in a particularly vulnerable position and minors have received the necessary **basic** training with regard to the special needs of these persons;

(c) personnel interviewing persons in a particularly vulnerable position and minors have received the necessary training with regard to the special needs of these persons *and receive regular in-service training in this field*;

*Justification*

*It is not enough to give the officials concerned general basic training: they must be properly trained for their task. It is necessary to bring the directive into line with the provisions of*

*Council of Europe Recommendation 98/15. Moreover, in Paragraph 8 of its resolution of 15 June 2000, the European Parliament calls for sufficient numbers of suitably qualified personnel to be made available.*

Amendment 50

Article 14, paragraph 1, subparagraph (d)

(d) personnel examining applications for asylum have received the necessary **basic** training with respect to international refugee law, national asylum law, relevant international human rights law, **this Directive** and the assessment of applications for asylum from persons with special needs, including unaccompanied minors;

(d) personnel examining applications for asylum have received the necessary training with respect to international refugee law, national asylum law, relevant international human rights law, **European legislation on asylum and information about the countries of origin** and the assessment of applications for asylum from persons with special needs, including unaccompanied minors **and receive regular in-service training in these fields;**

*Justification*

*It is not enough to give the officials concerned general basic training: they must be properly trained for their task. It is necessary to bring the directive into line with the provisions of Council of Europe Recommendation 98/15. Moreover, in Paragraph 8 of its resolution of 15 June 2000, the European Parliament calls for sufficient numbers of suitably qualified personnel to be made available.*

Amendment 51

Article 14, paragraph 1, subparagraph (e)

(e) personnel responsible for orders of detention have received the necessary **basic** training with respect to national asylum law, relevant international human rights law, **this Directive** and national rules for detention.

(e) personnel responsible for orders of detention have received the necessary training with respect to national asylum law, relevant international human rights law, **European legislation on asylum and information about the countries of origin** and national rules for detention **and receive regular in-service training in these fields.**

*Justification*

*It is not enough to give the officials concerned general basic training: they must be properly trained for their task. It is necessary to bring the directive into line with the provisions of*

*Council of Europe Recommendation 98/15. Moreover, in Paragraph 8 of its resolution of 15 June 2000, the European Parliament calls for sufficient numbers of suitably qualified personnel to be made available.*

Amendment 52  
Article 15, paragraph 1

1. Member States shall take appropriate measures to **ensure** that information regarding individual applications for asylum is kept confidential.

1. Member States shall take appropriate measures to **guarantee** that information regarding individual applications for asylum is kept confidential.

*Justification*

*Confidentiality must be absolutely guaranteed.*

Amendment 53  
Article 15, paragraph 1a (new)

***1a. Hearings at all levels must always be held in camera, unless the applicant requests otherwise.***

*Justification*

*This would be in recognition of the fact that personal data of asylum-seekers must be kept confidential.*

Amendment 54  
Article 16, paragraph 2

2. If an applicant for asylum has disappeared, the determining authority may discontinue the examination of the application if, without reasonable cause, the applicant has not complied with reporting duties or requests to provide information or to appear for an personal interview for at least **30 working days**.

2. If an applicant for asylum has disappeared, the determining authority may discontinue the examination of the application if, without reasonable cause, the applicant has not complied with reporting duties or requests to provide information or to appear for an personal interview for at least **3 months**.

*Justification*

*In practice 30 days is an unsustainable time limit. The Dublin Convention provides for two months and the process often takes as much as three.*

Amendment 55  
Article 17, introduction

Member States shall take appropriate measures to enable the UNHCR or other organisations that are working on behalf of the UNHCR:

Member States shall take appropriate measures to enable the UNHCR or other organisations that are working on behalf of the UNHCR ***or independently***:

*Justification*

*Other NGOs work with asylum seekers, not just those under the auspices of the UNHCR. To limit this would be to deprive asylum seekers of vital assistance and support.*

Amendment 56  
Article 18, introduction and subparagraph (a)

***The following provisions are without prejudice to the ECHR, in particular Article 3 of that Convention.***

Member States may dismiss a particular application for asylum as inadmissible if:

Member States may dismiss a particular application for asylum as inadmissible if:

- (a) another Member State ***is responsible*** for examining the application, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country or stateless person in one of the Member States;

- a) another Member State ***has clearly accepted responsibility*** for examining the application, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country or stateless person in one of the Member States;

*Justification*

*The obligation to respect the ECHR should be made explicit. It is necessary to ensure that another Member State has accepted responsibility.*

Amendment 57  
Article 19

When a Member State requests another Member State to take the responsibility for examining a particular application for asylum, the requesting Member State shall inform the applicant as soon as possible of the request, its content and the relevant time-limits in a language which he understands.

When a Member State requests another Member State *or third state* to take the responsibility for examining a particular application for asylum, the requesting Member State shall inform the applicant as soon as possible of the request, its content and the relevant time-limits in a language which he understands.

***The requesting Member State shall also inform the applicant of any reply from the requested Member State in a language that they understand.***

*Justification*

*The article should be extended to third states and additional procedural protection should be added regarding replies. Another safeguard to ensure that the applicant is not lost and overwhelmed in procedure and is kept informed of his case.*

Amendment 58  
Article 21

1. Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex I.

1. Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex I ***and as long as the EU has not established a common asylum policy based on a uniform procedure.***

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and wish to retain these laws or regulations, shall notify them to the Commission within six

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and wish to retain these laws or regulations, shall notify them to the Commission within six

months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments. ***In doing so Member States shall give specific grounds for the exclusion or addition of a specific safe third country.***

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this Directive, as well as any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this Directive, as well as any subsequent relevant, ***reasoned*** amendments.

#### *Justification*

*The aim of this amendment is to underline, first, that the present proposal is only making a first step towards a proper common policy and, second, that the concept of the safe third country is a controversial one and needs continual reassessment.*

#### Amendment 59 Article 22, subparagraph (b)

(b) ***there are grounds for considering that this particular applicant will be re-admitted to its territory***

(b) ***the third country has given its explicit consent to (re-)admit the asylum applicant to its territory and provide access to the substantive refugee determination procedure;***

#### *Justification*

*The analysis of whether the asylum-seeker can be sent to a third country for determination of the claim must be done on individual basis. Any list-based approach should therefore be avoided. It is necessary that the third country give its explicit consent to (re)admit the asylum applicant; without such guarantees the applicant will be likely to be redirected or expelled to another state, giving a serious risk of refoulement.*

#### Amendment 60 Article 22, paragraph (c)

(c) there are ***no*** grounds for considering that the country is ***not*** a safe third country in his particular circumstances.

(c) there are ***sufficient*** grounds for considering that the country is a safe third country in his particular circumstances.



*Justification*

*The draft article should be formulated positively, putting the burden of proof that the third country is safe clearly on the removing Member State.*

Amendment 61  
Article 23, paragraph 1

**1. If a personal interview on the admissibility of the application for asylum with regard to Article 18(b) or (c) is conducted with an applicant,** Member States shall ensure that the competent authorities conduct this personal interview within 40 working days after the application of the person concerned has been made.

**1.If Article 8 (5) is not applied, the** Member States shall ensure that the competent authorities conduct the personal interview within 40 working days after the application of the person concerned has been made.

*Justification*

*It should be clear that no other grounds for exceptions than those listed in Article 8(5) can be allowed. The personal interview is an absolute necessity for reaching a proper and lawful decision on an application for asylum.*

Amendment 62  
Article 23, paragraph 3

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be **65 working days**.

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be **3 months**.

*Justification*

*None available.*

Amendment 63  
Article 23, paragraph 5

5. When implementing a decision based on Article 22, Member States **may** provide the applicant with a document in the language of the third country informing the authorities of that country that the application has not been examined in substance

5. When implementing a decision based on Article 22, Member States **must** provide the applicant with a document in the language of the third country informing the authorities of that country that the application has not been examined in substance

*Justification*

*In order to safeguard the rights of the persons concerned and to ensure maximum equality of rights, it is appropriate for all Member States to seek to adopt the same approach and draw up such a declaration when sending an asylum seeker to a 'safe third country'.*

Amendment 64  
Article 24, paragraph 3

**3. The time-limit in paragraph 1 can be extended for six months if there is reasonable cause. Reasonable cause is, inter alia, assumed if the determining authority is awaiting clarification by the reviewing body or the Appellate Court on an issue that could affect the nature of the decision on the application.**

**3. A time-limit as provided for in paragraph 1 may be extended in accordance with the provisions of the national law of each Member State.**

*Justification*

*The directive lays down minimum standards.*

Amendment 65  
Article 24, paragraph 4

4. If the time-limit is extended, the determining authority must serve written notice on the applicant. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

4. If the time-limit is extended, the determining authority must serve written notice on the applicant ***in a language which he understands***. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

*Justification*

*This is a fundamental right, and one which the directive recognises at all other stages in the procedure. It is therefore logical to fill this gap.*

Amendment 66  
Article 25, paragraph 2

2. An applicant for asylum shall be considered to have sufficiently put forward the relevant facts of his case if he has provided statements on his age, background, identity, nationality, travel routes, identity and travel documents and the reasons justifying his need for protection with a view to helping the competent authorities to determine the elements on which his application for asylum is based.

2. An applicant for asylum shall, *in principle*, be considered to have sufficiently put forward the relevant facts of his case if he has provided statements on his age, background, identity, nationality, travel routes, identity and travel documents and the reasons justifying his need for protection with a view to helping the competent authorities to determine the elements on which his application for asylum is based.

#### *Justification*

*The insertion of the words 'in principle' makes it clear that what is being set out is the normal case. There may, nevertheless, be specific instances in which a more extensive or different interpretation is called for.*

#### Amendment 67 Article 25, paragraph 3

3. After the applicant has made an effort to support his statements concerning the relevant facts by any available evidence and has given *a satisfactory* explanation for any lack of evidence, the determining authority must assess the applicant's credibility and evaluate the evidence.

3. After the applicant has made an effort to support his statements concerning the relevant facts by any available evidence and has given *an* explanation for any lack of evidence, the determining authority must assess the applicant's credibility and evaluate the evidence.

#### *Justification*

*The word 'satisfactory' gives rise to unnecessary ambiguity, because it could be interpreted in two opposing ways.*

#### Amendment 68

Article 26, paragraph 1

Member States shall ensure that the determining authority may start an examination to withdraw or cancel the refugee status of a particular person as soon as information comes to light indicating that there are reasons to reconsider the validity of his refugee status.

Member States shall ensure that the determining authority may start an examination to *cease* or cancel the refugee status, *or to withdraw asylum* of a particular person as soon as *objective and well-founded* information comes to light indicating that there are reasons to reconsider the validity of his refugee status.

*Justification*

*It is important to avoid any arbitrary decision being taken to withdraw refugee status. The first part of the amendment consists of rewording deriving from other amendments.*

Amendment 69

Article 26, paragraph 2

2. Each cancellation *or withdrawal* of refugee status shall be examined under the regular procedure in accordance with the provisions of this Directive.

2. Each cancellation *or cessation* of refugee status, *or withdrawal of asylum* shall be examined under the regular procedure in accordance with the provisions of this Directive.

*Justification*

*The rewording follows from previous amendments.*

Amendment 70

Article 26, paragraph 3

3. Member States may provide for derogation from Articles 7 and 8 in cases where *it is impossible for the determining authority to comply with the provisions for reasons specifically relating to the grounds for withdrawal or cancellation*

3. Member States may provide for derogation from Articles 7 and 8 in cases where *the refugee has voluntarily re-established himself in the country where persecution was feared, and therefore compliance with the requirements laid down in these Articles proves impossible.*

*Justification*

*The rewording follows from previous amendments.*

Amendment 71  
Article 27

*Member States may adopt or retain an accelerated procedure for the purpose of processing applications that are suspected to be manifestly unfounded pursuant to Article 28.* **Delete**

*Justification*

*Not available.*

Amendment 72  
Article 28, paragraph 1, subparagraph (c)

*(c) a person has made an application for asylum at the last stage of a procedure to deport him and could have made it earlier;* **Delete**

*Justification*

*Applications for asylum can only be considered manifestly unfounded if they are clearly not related to the criteria for the granting of refugee status on the basis of the Geneva Convention and European Convention for the Protection of Human Rights and Fundamental Freedoms.*

Amendment 73  
Article 28, paragraph 1, subparagraph (f)

(f) the applicant has submitted a new application raising no relevant new facts with respect to his particular circumstances or to the situation in his country of origin.

(f) the applicant has submitted a new application raising no relevant new facts with respect to his particular circumstances or to the situation in his country of origin, ***except where poor representation of the applicant precluded the submission of evidence relevant to the applicant during the determination procedure of the initial application.***

*Justification*

*The conditions for rejecting an application as manifestly unfounded need to be more tightly drawn.*

Amendment 74

Article 28, paragraph 1, subparagraph (f a) (new)

***(fa) essential elements of the applicant's statements are unsubstantiated or contain internal contradictions, obviously fail to correspond with the facts or are based on forged or falsified evidence.***

*Justification*

*This addition is along the same lines as the provisions set out in points (a) to (f)*

Amendment 75

Article 28, paragraph 1a (new)

***1 a. If the applicant provides additional information relevant to the application or clarifies information previously communicated to the competent authorities of the Member States sufficient to suggest Article 28(1) does not apply then the application shall be processed under the regular procedure.***

*Justification*

*Should re-enter into regular procedure.*

Amendment 76

Article 28, paragraph 2a (new)

***2a. The article is without prejudice to consideration of claims pursuant to Article 3 of the ECHR or other claims for protection outside the Geneva***

**Convention.**

*Justification*

*The directive should make clear that, even if pursuant to this directive a claim is found to be manifestly unfounded for the purposes of protection under the Geneva Convention such should not undermine claims for protection under other instruments.*

Amendment 77  
Article 29, paragraph 3

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be **65 working days**.

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be **one month**.

*Justification*

*The rapporteur takes the view that it is much simpler to count in weeks and months. It is also clearer for the applicant. This time limit will permit consistency with the other time limits while respecting the interests of the applicant and of administrations in rapid decision-making.*

Amendment 78  
Article 30, paragraph 1

1. Member States may consider a country as a safe country of origin for the purpose of examining applications for asylum **only in accordance with** the principles set out in Annex II.

1. Member States may consider a country as a safe country of origin for the purpose of examining applications for asylum **on the basis of** the principles set out in Annex II.

*Justification*

*The development of new forms of persecution since the signature of the Geneva Convention,*

*for example by terrorist groups and fundamentalist religious fanatics and on account of the existence of ethnic wars within countries, ought now to make it possible to reinforce the Geneva Convention by introducing territorial asylum and, in the same way, granting asylum on health grounds following the emergence of an international tragedy such as AIDS, which has particularly affected Africa.*

Amendment 79  
Article 30, paragraph 3

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulation designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant amendments.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant ***and reasoned*** amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulation designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant ***and reasoned*** amendments.

*Justification*

*None available.*

Amendment 80  
Article 31a (new)

***Under Articles 21, 22, 30 and 31 and in compliance with Article 6 of this Directive no designation of a state as a safe third country shall create an irrebuttable presumption of safety.***



*Justification*

*Must ensure that the individual assessment is maintained.*

Amendment 81  
Chapter V, title

Appeals procedures

Appeals *procedure - legal review*

*Justification*

*The chapter deals not only with the possibility of an appeals procedure but also with that of legal review.*

Amendment 82  
Article 32, first paragraph

Applicants for asylum have the right to appeal against any decision taken on the admissibility or the substance of their application for asylum.

Applicants for asylum have the right to appeal against, ***or apply for judicial review of***, any decision taken on the admissibility or the substance of their application for asylum.

*Justification*

*The change in the wording makes it clear that, depending on national arrangements, the first resort can either be to a higher administrative body or committee, or a court.*

Amendment 83  
Article 32, second paragraph a (new)

***This article shall be without prejudice to consideration of claims pursuant to Article 3 of the ECHR or other claims for protection.***

### *Justification*

*The directive should make clear that a claim for protection outside the scope of the Geneva Convention could still be valid no matter what the outcome of an appeal based on an application for asylum according to the principles of the Geneva Convention..*

#### Amendment 84 Article 33, paragraph 1

1. Appeal shall have suspensive effect. The applicant may remain in the territory **or at the border** of the Member State concerned awaiting the outcome of the decision of the reviewing body.

1. Appeal / **judicial review** shall, **in principle**, have suspensive effect. The applicant may remain in the territory of the Member State concerned awaiting the outcome of the decision of the reviewing body.

### *Justification*

*In Paragraph 3 of the resolution of 15 June 2000, the European Parliament states that asylum seekers have the right to remain on the territory of the country of asylum. It is desirable to remain consistent with the position adopted earlier.*

#### Amendment 85 Article 33, paragraph 2, subparagraphs (a) and (b)

2. Member States may derogate from this rule:

**(a) in cases where a country which is not a Member State is considered as a safe third country for the applicant pursuant to Articles 21 and 22;**

**(b) in cases that are dismissed as manifestly unfounded pursuant to Article 28;**

2. Member States may derogate from this rule:

**Delete**

**Delete**

### *Justification*

*The draft article is not consistent with international standards in so far as it allows for derogations from the rule of the suspensive effect of the appeals on safe third country bases, in case of manifestly unfounded claims and on grounds of national security or public order. An asylum seeker should in principle have the right to remain on the territory of the asylum country and should not be removed, excluded or deported until a final decision has been made on the case or on the responsibility for assessing the case. In addition, in its resolution of 15 June 2000, the European Parliament took the view that appeal should have suspensive*

*effect.*

Amendment 86  
Article 33, paragraph 2, point (ca)(new)

***(ca) in cases where, pursuant to Articles 30 and 31, a State that is not a Member State is regarded as a safe country of origin for the applicant.***

*Justification*

*Member States must be permitted to derogate in the same way where safe countries of origin are concerned.*

Amendment 87  
Article 33, paragraph 3

3. If the suspensive effect of appeal is denied, the applicant shall have the right to apply to the competent authority for leave to remain on the territory ***or at the border*** of the Member State during the appeals procedure. No expulsion may take place until the competent authority ***has taken a decision*** on this request, ***except in cases where a country which is not a Member State is considered as a safe third country for the applicant pursuant to Articles 21 and 22.***

3. If the suspensive effect of appeal / ***judicial review*** is denied, the applicant shall have the right to apply to the competent authority / ***court*** for leave to remain on the territory of the Member State during the appeals procedure. No expulsion may take place until the competent authority / ***court*** has ***ruled*** on this request.

*Justification*

*The change in the wording makes it clear that, depending on national arrangements, the first resort can either be to a higher administrative body or committee, or a court. Secondly, in Paragraph 3 of the resolution of 15 June 2000, the European Parliament states that asylum seekers have the right to remain on the territory of the country of asylum. We wish to remain consistent with the position adopted earlier. Thirdly, the deletion of the third part responds to the need for protection against expulsion.*

Amendment 88  
Article 33, paragraph 4

4. Member States shall ensure that the competent authority processes the request as soon as possible.

4. Member States shall ensure that the competent authority / **court** processes the request as soon as possible.

*Justification*

*The change in the wording makes it clear that, depending on national arrangements, the first resort can either be to a higher administrative body or committee, or a court.*

Amendment 89  
Article 34, paragraph 1

1. Member States shall lay down by law or regulation reasonable time-limits for giving notice of appeal and for filing the grounds of appeal. The time-limit for filing the grounds of appeal in regular cases **shall in no case be less than 20 working days**.

1. Member States shall lay down by law or regulation reasonable time-limits for giving notice of appeal / **judicial review** and for filing the grounds of appeal. The time-limit for filing the grounds of appeal / **judicial review** in regular cases **shall be one month**.

*Justification*

*The change in the wording makes it clear that, depending on national arrangements, the first resort can either be to a higher administrative body or committee, or a court.*

Amendment 90  
Article 34, paragraph 2

2. Member States shall lay down all other necessary rules for lodging appeal, including rules to extend the time-limit for filing the grounds of appeal for a reasonable cause.

2. Member States shall lay down all other necessary rules for lodging appeal / **applying for judicial review**, including rules to extend the time-limit for filing the grounds of appeal for a reasonable cause.

*Justification*

*Partial acceptance of the rapporteur's amendment, while retaining the original text proposed by the Commission.*

Amendment 91  
Article 34, paragraph 5

5. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may provide for the reviewing body to take a decision on appeal within **seven working days**.

5. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may provide for the reviewing body to take a decision on appeal / **judicial review** within **two weeks**.

*Justification*

*The rapporteur takes the view that it is much simpler to count in weeks and months. It is also clearer for the applicant*

Amendment 92  
Article 35, paragraph 1

1. Member States shall ensure that, in cases where an application has been found to be inadmissible or manifestly unfounded, the reviewing body takes a decision within **65 working days** after notice of appeal has been given in accordance with Article 34(1).

1. Member States shall ensure that, in cases where an application has been found to be inadmissible or manifestly unfounded, the reviewing body takes a decision within **three months** after notice of appeal / **judicial review** has been given in accordance with Article 34(1).

### *Justification*

*The rapporteur takes the view that it is much simpler to count in weeks and months. It is also clearer for the applicant. The second change makes it clear that, depending on national arrangements, the first resort can either be to a higher administrative body or committee, or a court.*

#### Amendment 93 Article 35, paragraph 3

3. A time-limit in paragraph 1 or 2 may be extended if there is reasonable cause.  
***Reasonable cause is, inter alia, assumed if the reviewing body is awaiting clarification by the Appellate Court on a point of law that could affect the nature of its decision.***

If the time-limit is extended, the reviewing body must serve written notice on the applicant. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

3. A time-limit in paragraph 1 or 2 may be extended ***by three months*** if there is reasonable cause. ***In the specific event of a decision of the court of appeal which is relevant to the decision on the application being awaited, the determining authority may extend the time limit, in agreement with the applicant for asylum, by a further six months.***

If the time-limit is extended, the reviewing body must serve written notice on the applicant ***in a language which he understands***. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

### *Justification*

*The change in wording is more appropriate for the determining body since it is more fact-based. The fact that the extension can only take place with the agreement of the asylum seeker strengthens his/her legal position with a view to a rapid procedure. As regards the second paragraph, this is a fundamental right, and one which the directive recognises at all other stages in the procedure. It is therefore logical to fill this gap.*

#### Amendment 94 Article 36

***1. Member States may introduce a procedure that provides for automatic review by a reviewing body of decisions by***

***Delete***

*determining authorities finding cases to be inadmissible or manifestly unfounded.*

*2. If a Member State chooses to introduce such a procedure, it shall provide for reasonable time-limits for the applicant to submit written comments.*

*Delete*

*3. In a procedure providing for automatic review, the provisions of Articles 32(2), 33 and 34(3), (4) and (5) shall apply.*

*Delete*

*Justification*

*Firstly, this provision runs counter to the aim of the proposal for a directive - to shorten the asylum procedure; secondly, it is unacceptable to introduce additional administrative procedures of this kind.*

Amendment 95  
Article 37, point (d)

(d) there are reasonable grounds for regarding the applicant as a danger to the security of the Member State in which he is located;

(d) there are reasonable grounds for regarding the applicant as a danger to the security *and/or public order* of the Member State in which he is located;

*Justification*

*In line with usual legal practice.*

Amendment 96  
Article 38, paragraph 3

*3. Member States may provide that in cases where an application has been found to be inadmissible or manifestly unfounded, the Appellate Court is able to decide whether or not to give leave to appeal and, in cases in respect of which*

*Delete*

***leave to appeal is granted, to examine the decisions in an abbreviated or accelerated procedure.***

*Justification*

*The right to appeal should not depend on a decision by a judge. This paragraph does not accord with basic principles and guarantees in the proposal.*

Amendment 97  
Article 38, paragraph 4

4. Member States may provide that in cases in which the reviewing body has not taken a decision within the time-limits provided for in Article 35(1) or (2), applicants and/or determining authorities shall have the right to request a decision from the ***Appellate Court*** setting a time-limit for a decision by the reviewing body. Member States may provide for a decision to be taken by the ***Appellate Court*** in these cases as soon as possible.

4. Member States may provide that in cases in which the reviewing body has not taken a decision within the time-limits provided for in Article 35(1) or (2), applicants and/or determining authorities shall have the right to request a decision from the ***court*** setting a time-limit for a decision by the reviewing body. Member States may provide for a decision to be taken by the ***court*** in these cases as soon as possible.

*Justification*

*Wording changed for the sake of clarification.*

Amendment 98  
Article 39, paragraph 1

1. Member States shall lay down rules by law on suspensive effect pending the ruling of the ***Appellate Court***.

1. Member States shall lay down rules by law on suspensive effect pending the ruling of the ***court / court of appeal***.



*Justification*

*Self-explanatory.*

Amendment 99  
Article 39, paragraph 2

2. In all cases in which suspensive effect is denied, the applicant for asylum shall have the right to apply to the ***Appellate Court*** for leave to remain on the territory or at the border of the Member State during further appeal. No expulsion may take place until a decision has been taken by the ***Appellate Court*** on this request.

2. In all cases in which suspensive effect is denied, the applicant for asylum shall have the right to apply to the ***court / court of appeal*** for leave to remain on the territory or at the border of the Member State during further appeal. No expulsion may take place until a decision has been taken by the ***court / court of appeal*** on this request.

*Justification*

*Self-explanatory.*

Amendment 100  
Article 39, paragraph 4

4. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may require the Appellate Court to rule on the request pursuant to paragraph 2 within ***seven*** working days.

4. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may require the ***judicial body or*** Appellate Court to rule on the request pursuant to paragraph 2 within ***ten*** working days.

*Justification*

*Ten working days correspond to two calendar weeks.*

Amendment 101  
Article 43, second paragraph

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States *at least every five years*.

*Two years after* presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States.

*Justification*

*A single follow-up report would be preferable, in order to avoid regular reporting and the additional work associated with it.*

Amendment 102  
Annex I, I, A and B

A. it *generally* observes the standards laid down in international law for the protection of refugees;

A. it *consistently* observes the standards laid down in international law for the protection of refugees;

B. it *generally* observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

B. it *consistently* observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

*Justification*

*Need for higher standards.*

Amendment 103  
Annex I, I.A.(1)

1. A safe third country is any country that

1. A safe third country is any country that

has ratified the Geneva Convention, observes the provisions of that Convention with respect to the rights of persons who are recognised and admitted as refugees and has in place with respect to persons who wish to be recognised and admitted as refugees an asylum procedure *in accordance with* the following principles:

has ratified the Geneva Convention, observes the provisions of that Convention with respect to the rights of persons who are recognised and admitted as refugees and has in place with respect to persons who wish to be recognised and admitted as refugees an asylum procedure *based on* the following principles:

#### *Justification*

*This wording is preferable as it avoids the expression 'in accordance with', which could cause difficulties of interpretation.*

#### Amendment 104

Annex I, I, A, 1, first indent a (new)

- *the filing of an application for asylum is not subject to any prior formality and applicants have an effective opportunity to lodge an asylum application.*

#### *Justification*

*A country cannot be considered to be safe for an asylum applicant if she/he will not be given access to the asylum procedure.*

#### Amendment 105

Annex I, I Requirements, A. (3)

- Applicants for asylum are allowed to remain *at the border or* on the territory of the country as long as the decision on their application for asylum has not been decided on.
- Applicants for asylum are allowed to remain on the territory of the country as long as the decision on their application for asylum has not been decided on.

#### *Justification*

*It is necessary to guarantee all applicants for asylum an appropriate and humane treatment and reception until the application has been decided on.*

Amendment 106  
Annex I, I.A (1), fifth indent

- Applicants for asylum are given the opportunity to communicate with the UNHCR or other organisations that are working on behalf of the UNHCR.

- Applicants for asylum are given the opportunity to communicate with the UNHCR or other **non-governmental** organisations that are working on behalf of the UNHCR.

*Justification*

*NGOs other than those working on behalf of the UNHCR are also important, and applicants for asylum must have access to them.*

Amendment 107  
Annex I, I.A (1), seventh indent

- The UNHCR or other organisations working on behalf of the UNHCR have, in general, access to asylum applicants and to the authorities to request information regarding individual applications, the course of the procedure and the decisions taken and, in the exercise of their supervisory responsibilities under Article 35 of the Geneva Convention, can make representations to these authorities regarding individual applications for asylum.

- The UNHCR or other **non-governmental** organisations, **including those** working on behalf of the UNHCR have, in general, access to asylum applicants and to the authorities to request information regarding individual applications, the course of the procedure and the decisions taken and, in the exercise of their supervisory responsibilities under Article 35 of the Geneva Convention, can make representations to these authorities regarding individual applications for asylum.

*Justification*

*NGOs other than those working on behalf of the UNHCR are also important, and applicants for asylum must have access to them.*

Amendment 108  
Annex I, I, A, 2, third indent

• it nonetheless **generally** observes in practice the standards laid down in the

• it nonetheless **consistently** observes in practice the standards laid down in the

Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention and has in place with respect to the persons who wish to be so protected a procedure which is in accordance with the above mentioned principles; or

Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention and has in place with respect to the persons who wish to be so protected a procedure which is in accordance with the above mentioned principles; or

*Justification*

*Need for higher standards.*

Amendment 109  
Annex I, I Requirements, A. 2), fourth indent

- ***it complies in any other manner whatsoever with the need for international protection of these persons, either through cooperation with the Office of UNHCR or other organisations which may be working on behalf of the UNHCR or by other means deemed in general to be adequate for that purpose as evinced by the Office of the UNHCR.*** **Delete**

*Justification*

*Need for higher standards.*

Amendment 110  
Annex I, I, B, 1

*B. The basic standards laid down in international human rights law*  
1. Any country that has ratified either the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") or both the 1966 International Covenant on Civil and Political Rights (hereinafter

*B. The basic standards laid down in international human rights law*  
1. Any country that has ratified either the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") or both the 1966 International Covenant on Civil and Political Rights (hereinafter

referred to as the "International Covenant") and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "Convention against Torture"), and **generally** observes the standards laid down therein with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, freedom from slavery and servitude, the prohibition of retroactive criminal laws, the right to recognition as a person before the law, freedom from being imprisoned merely on the ground of inability to fulfil a contractual obligation and the right to freedom of thought, conscience and religion.

referred to as the "International Covenant") and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "Convention against Torture"), and **consistently** observes the standards laid down therein with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, freedom from slavery and servitude, the prohibition of retroactive criminal laws, the right to recognition as a person before the law, freedom from being imprisoned merely on the ground of inability to fulfil a contractual obligation and the right to freedom of thought, conscience and religion.

### *Justification*

*None available.*

#### Amendment 111 Annex II, I, point A

A country is considered as a safe country of origin if it **generally** observes the basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation, and it:

A. has democratic **institutions** and the following rights are **generally** observed there: the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of peaceful assembly, the right to freedom of associations with others, including the right to form and join trade unions and the right to take part in government directly or through freely chosen representatives;

A country is considered as a safe country of origin if it **consistently** observes the basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation, and it:

A. has democratic **structures** and the following rights are **consistently** observed there: the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of peaceful assembly, the right to freedom of associations with others, including the right to form and join trade unions and the right to take part in government directly or through freely chosen representatives;

### *Justification*

*Compliance with international law cannot be judged in the light of terms such as 'generally'. Such concepts allow too much scope for interpretation. The authors of the amendment therefore propose deleting them. The decisive factor is not the existence of isolated democratic institutions, but that of generalised democratic structures.*

## DRAFT LEGISLATIVE RESOLUTION

### **European Parliament legislative resolution on the proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000) 578 – C5-0705/2000 - 2000/0238(CNS))**

#### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2000) 578<sup>1</sup>),
  - having been consulted by the Council pursuant to Article 67 and Article 63 of the EC Treaty (C5-0705/2000),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Women's Rights and Equal Opportunities (A5-0291/2001),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 62, 27.2.2001, p. 231.



26 June 2001

**OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS,  
COMMON SECURITY AND DEFENCE POLICY**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council directive on Asylum: minimum standards on procedures for granting and withdrawing refugee status  
(COM(2000) 578 – C5-0705/2000 – 2000/0238(CNS))

Draftsman: Andrew Nicholas Duff

**PROCEDURE**

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Andrew Nicholas Duff draftsman at its meeting of 5 December 2000.

It considered the draft opinion at its meeting of 26 June 2001.

At this latter it adopted the following amendments by 18 votes, with 1 abstention.

The following were present for the vote: Elmar Brok chairman; Catherine Lalumière 3rd vice-chairman; Andrew Nicholas Duff, draftsman; Alexandros Baltas, John Walls Cushnahan, Rosa M. Díez González, Pere Esteve, Per Gahrton, Vitaliano Gemelli (for Jas Gawronski), Bertel Haarder, Hanja Maij-Weggen (for Johan Van Hecke), Pedro Marset Campos, Philippe Morillon, Arie M. Oostlander, Hans-Gert Poettering, José Ignacio Salafranca Sánchez-Neyra, Demetrio Volcic (for Pasqualina Napoletano), Matti Wuori, Christos Zacharakis.

## SHORT JUSTIFICATION

### BACKGROUND

1. According to the Conclusions of the Presidency at the Tampere European Council in October 1999, a common European asylum system is to include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers and the approximation of rules on the recognition and content of the refugee status. This is to be supplemented with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.
2. On 24 May 2000, the Commission adopted a proposal for a Council Directive on temporary protection in the event of a mass influx of displaced persons based on solidarity between Member States as a tool in the service of a common European asylum system (COM(2000) 578).
3. On 20 September 2000 the Commission adopted a Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000) 578 final 2000/0238 (CNS) ). The effect of the legislation would be merely to achieve the lowest common denominator of asylum policies of the Member States.
4. The rapporteur of the lead Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Mr. Ingo Schmitt has presented his report on 19 June 2001 substantially criticising the Commission's proposal. Mr Schmitt seeks to reduce the already modest objectives of the legislation by proposing greater national discretion in the way asylum seekers are handled, as well as less generous treatment of individual applicants.
5. However, as the directive mainly concerns procedural aspects of dealing with refugees at the EU borders, the Opinion limits itself to matters relevant to the foreign, security and human rights policies of the Union, including enlargement. Some amendments to the text are proposed with the aim of minimising possible negative impacts on the international relations of the Union.

## AMENDMENTS

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

Amendment 1  
Recital 21 (new)

:

***The Union should take care that its assistance programmes for the candidate countries for accession to the EU cover sufficient education and training activities in the fields both of asylum and immigration, and police and judicial co-operation in order for them to comply with this directive.***

*Justification*

*The successful implementation of this legislation requires a high capability of public administration in both Member States and candidate countries.*

Amendment 2  
Article 1a (new)

.

***The European Union is committed to respecting all the existing international obligations of Member States as well as the Charter of Fundamental Rights of the European Union, especially Article 18.***

*Justification*

*The necessity to respect all existing international law commitments needs to be underscored, as well as making a specific reference to the Charter of Fundamental Rights which was drafted very much in the context of the future development of EU asylum and immigration policy.*

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<sup>1</sup> OJ C .

Amendment 3  
Article 11a (new)

*The procedures should also contribute to the improvement of the Union's international relations by being as clear and transparent as possible in order to facilitate their interpretation by third countries and their citizens. Moreover, this legislation sets the standards that need to be met by all candidate countries.*

*Justification*

*Self-explanatory*

Amendment 4  
Article 21

1. Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex I.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this

1. Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex I ***and as long as the EU has not established a common asylum policy based on a uniform procedure.***

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments. ***In doing so Member States shall give specific grounds for the exclusion or addition of a specific safe third country..***

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this

Directive, as well as any subsequent relevant amendments.

Directive, as well as any subsequent relevant, **reasoned** amendments.

*Justification*

*The aim of this amendment is to underline, first, that the present proposal is only making a first step towards a proper common policy and, second, that the concept of the safe third country is a controversial one and needs continual reassessment.*

Amendment 5  
Article 30

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulation designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant amendments.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant **and reasoned** amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulation designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant **and reasoned** amendments.

*Justification*

*See amendment 4*

Amendment 6  
Article 43

No later than two years after the date specified in Article 44(1), the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is

No later than two years after the date specified in Article 44(1), the Commission shall report to the European Parliament and the Council on the application of this directive in the Member States and shall propose any amendments that are necessary. **The Commission shall also assess the continuing validity of the safe**

appropriate for drawing up this report not later than eighteen months after the date specified in Article 44(1).

***third country concept and the extent to which relevant foreign states meet the application of the principles set out in Annexes I and II.*** The Member States shall send the Commission all the information that is appropriate for drawing up this report no later than eighteen months after the date specified in Article 44(1).

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

#### *Justification*

*The Union should not assume that the 'safe third country' will remain the accepted norm for the treatment of refugees. The Commission should examine the credibility of the concept on a continuing basis.*

11 April 2001

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status  
(COM(2000) 578 – C5-0705/2000 – 2000/0238(CNS))

Draftsperson: Patsy Sörensen

### **PROCEDURE**

The Committee on Women's Rights and Equal Opportunities appointed Patsy Sörensen draftsperson at its meeting of 22 November 2000.

It considered the draft opinion at its meetings of 27 November 2000, 20 March 2001 and 10 April 2001.

At the last meeting it adopted the following amendments by 16 votes to 1, with 2 abstentions.

The following were present for the vote: Maj Britt Theorin, chairperson; Marianne Eriksson, vice-chairperson; Jillian Evans, vice-chairperson; Patsy Sörensen, draftsperson; María Antonia Avilés Perea, Ilda Figueiredo (for Geneviève Fraisse), Koldo Gorostiaga Atxalandabaso, Lissy Gröner, Anna Karamanou, Christa Klaß, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Thomas Mann, Maria Martens, Emilia Franziska Müller, Christa Prets, Miet Smet, Joke Swiebel and Elena Valenciano Martínez-Orozco.

## AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1

#### Recital 13

(13) In addition, specific procedural guarantees for persons with special needs, such as unaccompanied minors, **should** be laid down.

(13) In addition, specific procedural guarantees for persons with special needs, such as **pregnant women, women with children, unaccompanied minors, traumatised victims of violence, or abuse will** be laid down.

#### *Justification:*

*The range of persons needing special care or guarantees should include those groups who are especially vulnerable in order to allow them to exercise their rights.*

### Amendment 2

#### Recital 13a (new)

**13a. Special account should be taken of the fact that women refugees can claim for asylum in their own right. Gender-specific reasons for applications, A.O. mutilation, rape as a weapon of war, stoning to death for presumed adultery, forced marriage, honour killings will be recognised as forms of gender related persecution falling within the scope of the 1951 Convention and its 1967 Protocol.**

#### *Justification:*

*It is essential that women can claim asylum in their own right and on gender specific grounds, as often women obtain refugee status in a derived way, either by family membership or ties to a male partner. Human rights violations linked to someone's gender should be recognised within the asylum proceedings*

#### **UNHCR EXCOM Conclusion No 79 (XLVII)**

*Calls on States to adopt an approach that is sensitive to gender-related concerns and which ensures that women whose claims as refugees are based on well founded fear of persecution*

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<sup>1</sup> OJ C .



*for reasons enumerated in the 1951 Convention and its 1967 Protocol, including persecution through sexual violence or gender-related persecution, are recognised as refugees.....*

#### Amendment 3

##### Recital 14

(14) Minimum requirements regarding the decision-making process in all procedures should include that decisions are taken by authorities qualified in the field of asylum and refugee matters, that personnel responsible for examination of applications for asylum receives appropriate training, that decisions are taken individually, objectively and impartially, and that negative decisions state the reasons for the decision in fact and in law.

(14) Minimum requirements regarding the decision-making process in all procedures should include that decisions are taken by authorities qualified in the field of asylum and refugee matters, that **all** personnel responsible for examination of applications for asylum receives appropriate training, **and that specialist training is foreseen for those dealing with applicants with gender-specific grounds for application and children**, that decisions are taken individually, objectively and impartially, and that negative decisions state the reasons for the decision in fact and in law.

##### *Justification:*

*It is essential that specialist training is provided for those examining applications from certain categories of applicants who can be expected to have extra difficulties describing the way they are persecuted.*

*The United Nations Division for the advancement of women November 1997*

*All persons involved in refugee determination must be trained with respect to the impact of trauma, cultural difference and sex difference on the willingness of women to disclose gender-based persecution.....*

#### Amendment 4

##### Article 4(3)

3. Member States shall ensure that all authorities **likely to** be addressed by the applicant at the border or on the territory of the Member State have instructions for dealing with applications for asylum, including the instruction to forward the applications to the competent authority for examination, **together with** all relevant information.

3. Member States shall ensure that all authorities **that may** be addressed by the applicant, **either** at the border or on the territory of the Member State, have **clear** instructions for dealing with applications for asylum, including the instruction to forward the applications to the competent authority for examination, **and all the** relevant information **for this purpose**.

*Justification*

*Improves the wording.*

Amendment 5

Article 5

Applicants for asylum shall be allowed to remain at the border or on the territory of the Member State in which the application for asylum has been made or is being examined as long as it has not been decided on.

Applicants for asylum shall be allowed to remain at the border or on the territory of the Member State in which the application for asylum has been made or is being examined as long as it has not been decided on. ***They will be provided with adequate shelter, food and medical care. Unaccompanied minors, young women and pregnant women will be allowed to remain on the territory pending the decision.***

*Justification:*

*Every person asking for, or expressing the will to ask for, asylum should be entitled to humane treatment and provided with shelter, food and medical care. Vulnerable persons should receive extra protection and not be left at the border area.*

Amendment 6

Article 7, point (d)

(d) They must be communicated decisions on applications for asylum in writing. ***If an application is rejected, the reasons for the decision in fact and in law shall be*** stated and information given on the possibility for review of the decision and, where applicable, on how to file an appeal and the relevant time-limits.

(d) They must be communicated decisions on applications for asylum in writing. ***The reasons for rejection of the application must be duly*** stated and information given on the possibility for review of the decision and, where applicable, on how to file an appeal and the relevant time-limits.

*Justification*

*Improves the wording.*

Amendment 7

Article 7(f) a (new)

***(f) a. Female applicants will be informed of their right to ask for a female***

***interpreter and/or official during the whole procedure.***

*Justification:*

*See Amendment 3.*

Amendment 8

Article 8 (7)

7. Member States shall ensure that an official and an interpreter of a sex chosen by the interviewee is ***involved in*** the personal interview on the substance of the application for asylum if there are reasons to believe that the person concerned finds it otherwise difficult to present the grounds for his application in a comprehensive manner owing to the ***experiences*** he has undergone or ***to*** his cultural origin.

7. Member States shall ensure that an official and/or an interpreter of a sex chosen by the interviewee is ***conducting - and present during***, the personal interview on the substance of the application for asylum ***on her/his request or*** if there are ***any*** reasons to believe that the person concerned finds it otherwise difficult to present the grounds for ***her/his*** application in a comprehensive manner owing to the ***difficulties she/he*** has undergone or ***her/his*** cultural origin.

*Justification:*

*It should be right for every applicant to choose the sex of the official and/or interpreter.*

Amendment 9

Article 9 (1)

1. Member States shall ensure that all applicants for asylum have the opportunity to contact in an effective manner organisations or persons that provide legal assistance at all stages of the procedure.

1. Member States shall ensure that all applicants for asylum have the opportunity to contact in an effective manner organisations or persons that provide legal assistance ***or counselling*** at all stages of the procedure. ***A list of such organisations and/or persons, including specialised non-governmental organisations, will be provided.***

*Justification:*

*In certain cases other forms of advise or help than legal advise are needed to ensure that an applicant is capable of defending his/her case during the procedures, such as traumatised, tortured or abused applicants.*

*Applicants are often not aware of the existence of such organisations and persons.*

#### Amendment 10

##### Article 9 (2)

2. In closed areas designated for the examination of applications for asylum, Member States **may** regulate the access of organisations providing legal assistance, provided such rules either serve the legitimate purpose of ensuring the quality of legal assistance or are objectively necessary to ensure an efficient examination in accordance with the national rules pertaining to the procedure in these areas and do not render access impossible.

2. In closed areas designated for the examination of applications for asylum, Member States **will** regulate the access of organisations providing legal assistance **or counselling**, provided such rules either serve the legitimate purpose of ensuring the quality of legal assistance or are objectively necessary to ensure an efficient examination in accordance with the national rules pertaining to the procedure in these areas and do not render access impossible.

##### *Justification:*

*Minors and more specifically young women and girls are vulnerable to actions by organised criminal organisations often ending up in forced prostitution or other forms of exploitation. Furthermore minors should have the possibility, independent of the possible outcome of the proceedings, to attend school.*

#### Amendment 11

##### Article 10, paragraph 2, point (b a) (new)

***(ba) Unaccompanied minors shall stay in a properly protected environment. To promote their integration they shall be granted the possibility of taking part in language courses and suitable school education.***

#### Amendment 12

##### Article 10, paragraph 2, point (b b) (new)

***(bb) Pregnant women and girls shall be entitled – whatever the outcome of the proceedings – to give birth to their baby in the territory of the Member State and may not be deported from the country until a period of at least three months has elapsed after the birth.***

#### Amendment 13

#### Article 11 (1)

1. Member States **shall** not hold an applicant for asylum in detention for the sole reason that his application for asylum needs to be examined. However, Member States may hold an applicant for asylum in detention for the purpose of taking a decision in the following cases, in accordance with a procedure prescribed by national law and only for as long as is necessary:

- (b) to ascertain or verify his identity or nationality;
- (c) to determine his identity or nationality when he has destroyed or disposed of his travel and/or identity documents or used fraudulent documents upon arrival in the Member State in order to mislead the authorities;
- (d) to determine the elements on which his application for asylum is based which in other circumstances could be lost;
- (e) in the context of a procedure, to decide on his right to enter the territory.

1. Member States **will** not hold an applicant for asylum in **closed** detention for the sole reason that his application for asylum needs to be examined. However, Member States may hold an applicant for asylum in detention **for a maximum period of 25 working days** for the purpose of taking a decision in the following cases, in accordance with a procedure prescribed by national law and only for as long as is necessary:

- (a) to ascertain or verify his identity or nationality;
- (b) to determine his identity or nationality when he has destroyed or disposed of his travel and/or identity documents or used fraudulent documents upon arrival in the Member State in order to mislead the authorities;
- (c) to determine the elements on which his application for asylum is based which in other circumstances could be lost;
- (d) in the context of a procedure, to decide on his right to enter the territory.

#### *Justification:*

*It would be inhumane to hold applicants in detention for longer than 25 working days for the reasons mentioned in Article 11 (a) to (d). After this period applicants, where applicable, should remain in open centres or be free to move on the territory of Member States.*

#### Amendment 14 Article 13 (1)(a)

(a) at their disposal specialised personnel with the necessary knowledge and experience in the field of asylum and refugee matters;

(a) at their disposal **sufficient** specialised **female and male** personnel with the necessary knowledge and experience in the field of asylum and refugee matters;

#### *Justification:*

*See Amendment 3. Sufficient female and male personnel should be available, taking account of the fact that applicants are given the right of choice.*

Amendment 15

Article 13 (1)(c)

(c) the right to ask advice, whenever necessary, from experts on particular issues, for example, **a** medical **or** cultural **issue**.

(c) the right to ask advice, whenever necessary, from experts on particular issues, for example **on** medical, cultural **or gender related issues**.

*Justification:*

*Gender related persecution is diverse and often complex. Specialised advice should be possible.*

Amendment 16

Article 15 (1)

1. Member States shall take appropriate measures to ensure that information regarding individual applications for asylum is kept confidential.

1. Member States shall take appropriate measures to ensure that information regarding individual applications for asylum is kept confidential **in general and by all those involved in the interviewing process**.

*Justification:*

*Fear that sensitive personal information will be leaked to others or to the country of origin should be prevented also considering that, for example, translators might be from those very countries.*

Amendment 17

Article 15, paragraph 3,

3. Member States shall take appropriate measures to ensure that no information for the purpose of examining the case of an individual applicant shall be **obtained** from the authorities of his country of origin **in a manner that would result in** the fact of his having applied for asylum becoming known to those authorities.

3. Member States shall take appropriate measures to ensure that no information for the purpose of examining the case of an individual applicant shall be **requested** from the authorities of his country of origin, **in order to prevent** the fact of his having applied for asylum becoming known to those authorities.

*Justification*

*Improves the wording.*

Amendment 18

Annex I, Part I, introductory phrase, letters A, B and B a (new)

A country is considered as a safe third country if it fulfils, with respect to those foreign nationals or stateless persons to which the designation would apply, the following *two* requirements:

A. it generally observes the standards laid down in international law for the protection of refugees;

B. it generally observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

A country is considered as a safe third country if it fulfils, with respect to those foreign nationals or stateless persons to which the designation would apply, the following *three* requirements:

A. it generally observes the standards laid down in international law for the protection of refugees;

B. it generally observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

***B a. it has signed and ratified the UN Convention on the Elimination of All Forms of Discrimination against Women and complies with it, in agreement with the recommendations and conclusions of the relevant supervisory UN committee.***

Amendment 19

Annex II, Part I, letter D a (new)

***(Da) it has signed and ratified the UN Convention on the Elimination of All Forms of Discrimination against Women and complies with it, in agreement with the recommendations and conclusions of the relevant supervisory UN committee.***