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REPORT

on the proposal for a Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM(2001) 510 – C5-0573/2001 – 2001/0207(CNS))

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

Rapporteur: Jean Lambert

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 15 November 2001 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty on the proposal for a Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM(2001) 510 – 2001/0207(CNS)).

At the sitting of 28 November 2001 the President of Parliament announced that he 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, the Committee on Employment and Social Affairs and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0573/2001).

At the sitting of 13 December 2001 the President of Parliament announced that he had also referred the proposal to the Committee on Petitions for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Jean Lambert rapporteur at its meeting of 21 November 2001.

It considered the Commission proposal and the draft report at its meeting of 18 April 2002, 23 May 2002, 18 June 2002, 9 July 2002 and 2 October 2002.

At the last meeting it adopted the draft legislative resolution by 25 votes to 18, with 1 abstention.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman ; Giacomo Santini, vice-chairman; Jean Lambert, rapporteur; Maria Berger (for Margot Keßler), Giuseppe Brienza, Marco Cappato (for Maurizio Turco), Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Enrico Ferri (for Bernd Posselt, pursuant to Rule 153(2)), Adeline Hazan, Pierre Jonckheer, Timothy Kirkhope, Eva Klamt, Ole Krarup, Carlos Lage (for Robert J.E. Evans, pursuant to Rule 153(2)), Baroness Sarah Ludford, Lucio Manisco (for Fodé Sylla), Luís Marinho (for Carmen Cerdeira Morterero), Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Marcello Dell'Utri), Hubert Pirker, José Ribeiro e Castro, Martine Roure, Heide Rühle, Gilles Savary (for Michael Cashman, pursuant to Rule 153(2)), Olle Schmidt (for Francesco Rutelli), Ingo Schmitt (for Hartmut Nassauer), Ilka Schröder, Miet Smet (for Mary Elizabeth Banotti), Ole Sørensen (for Lousewies van der Laan), Patsy Sørensen, Sérgio Sousa Pinto, The Earl of Stockton (for The Lord Bethell), Joke Swiebel, Anna Terrón i Cusi, Gianni Vattimo (for Walter Veltroni), Christian Ulrik von Boetticher, Christos Zacharakis (for Thierry Cornillet) and Olga Zrihen Zaari (for Martin Schulz).

The opinions of the Committee on Women's Rights and Equal Opportunities and of the Committee on Petitions are attached.

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy decided on 23 January 2002 not to deliver an opinion. The Committee on Budgets decided on 21 November 2001 not to deliver an opinion. The Committee on Legal Affairs and Internal

Market has decided on 27 November 2001 not to deliver an opinion. The Committee on Employment and Social Affairs has decided on 4 December 2001 not to deliver an opinion.

The report was tabled on 8 October 2002.

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

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM(2001) 510 – C5-0573/2001 – 2001/0207(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2001) 510¹),
 - having regard to Article 63 of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0573/2001),
 - having been informed by the Council that Ireland and the United Kingdom wish to participate in the adoption of the Commission proposal, ...
 - 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 Women's Rights and Equal Opportunities and the Committee on Petitions (A5-0333/2002),
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. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 51E, 26.2.2002, p. 325.

Amendment 1

Recital 1

(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the **Community**.

(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the **European Union**.

Justification

Asylum policy was 'communitised' by the Treaty of Amsterdam and is governed by provisions in the EC Treaty which form part of what is commonly referred to as the first pillar. However, some asylum-related measures, relating to external relations and crime prevention, are regulated by the Treaty on European Union, under the second and third pillars respectively. On this basis, it would therefore seem more appropriate to refer to the European Union in order to cover the three pillars and link this matter to the 'acquis communautaire', to which reference is made in other regulations which have already been approved and are in force.

Amendment 2

Recital 1a (new)

(1a) Paragraph 38 of the Action Plan of the Council and the Commission of 3 December 1998¹ provides for the adoption, in compliance with the Treaty of Amsterdam, of minimum standards with respect to the qualification of nationals of third countries as refugees and the definition of minimum standards for subsidiary protection to persons in need of international protection.

¹OJ C 19, 23.1.1999, p.1.

Justification

The Plan of Action of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (known as the 'Vienna Plan of Action'), which was endorsed by the European Council at its meeting in Vienna on 11 and 12 December 1998, constitutes a vital stage in the process of establishing an integrated asylum policy in the European Union. It must therefore be given due consideration.

Amendment 3

Recital 2

(2) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus ***maintaining the principle of non-refoulement and*** ensuring that nobody is sent back to persecution.

(2) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented ***and amended*** by the New York Protocol of 31 January 1967, thus ensuring, ***by virtue of the non-refoulement principle of international law,*** that nobody is sent back to persecution.

Justification

Some aspects of the Geneva Convention of 28 July 1951 were supplemented by the New York Protocol of 31 January 1967. A number of them, however, were radically altered, as illustrated by the new wording of paragraph 2 of Article 1(A).

The key element in asylum policy is unconditional respect for the principle of non-refoulement, as a universally accepted right. It is therefore important to draw attention to this point.

Amendment 4

Recital 4

(4) The Tampere Conclusions provide that a Common European Asylum System

(4) The Tampere Conclusions, ***in particular Conclusion 14,*** provide that a

should include in the short term the approximation of rules on the recognition and content of refugee status.

Common European Asylum System should include in the short term the approximation of rules on the recognition and content of refugee status.

Justification

Self-explanatory.

Amendment 5

Recital 5

(5) The Tampere Conclusions also provide that **rules regarding refugee status** should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

(5) The Tampere Conclusions also provide that **this Common European Asylum System** should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

Justification

This is more in keeping with the content of the Tampere conclusions.

Amendment 6

Recital 7

(7) This Directive respects **the** fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity, the right to asylum of applicants for asylum and their accompanying family members, and the protection in the event of removal, expulsion or extradition, promoting the application of Articles 1, 18 and 19 of the Charter.

(7) This Directive respects fundamental rights, **as defined in the Council of Europe's Convention on Human Rights**, and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity, the right to asylum of applicants for asylum and their accompanying family members, and the protection in the event of removal, expulsion or extradition, promoting the application of Articles 1, 18 and 19 of the Charter.

Justification

The Council of Europe's Convention on Human Rights, which has been ratified by all EU Member States and represents the basis of the Member States' jurisdiction, must also constitute the basis of this Council Directive.

Amendment 7

Recital 15

(15) In particular, it is necessary to introduce a common concept of the persecution ground “membership of a particular social group”, which shall be interpreted to include both groups which may be defined by relation to certain fundamental characteristics, such as gender and sexual orientation, as well as groups, such as trade unions, comprised of persons who share a common background or characteristic that is so fundamental to identity or conscience that those persons should not be forced to renounce their membership.

(15) In particular, it is necessary to introduce a common concept of the persecution ground “membership of a particular social group”, which shall be interpreted to include both groups which may be defined by relation to certain fundamental characteristics, such as gender and sexual orientation, as well as groups, such as trade unions, comprised of persons who share a common background or characteristic that is so fundamental to identity or conscience that those persons should not be forced to renounce their membership. ***It must not include any known sectarian activities.***

Justification

It is important to ensure that the open nature of the term ‘membership of a particular social group’ does not constitute a means for it to include certain illegal activities of organisations such as sects.

Amendment 8
Recital 19

(19) The approximation of rules on the recognition and content of refugee status and subsidiary protection should help to limit the secondary movements of applicants **for asylum** between Member States, where such movement is purely caused by differences in legal frameworks.

(19) The approximation of rules on the recognition and content of refugee status and subsidiary protection should help to limit the secondary movements of applicants between Member States, where such movement is purely caused by differences in legal frameworks.

Justification

We should try to avoid secondary movements between Member States, for both, the asylum and the subsidiary protection applicants.

Amendment 9
Recital 23a (new)

(23a) Member States should provide for a system of penalties in the event of violation of the national provisions adopted by virtue of this Directive.

Justification

Self-explanatory.

Amendment 10
Recital 23b (new)

(23b) Provision should be made for the necessary administrative cooperation for

the implementation of this Directive.

Justification

Self-explanatory.

Amendment 11
Rectal 23c (new)

23c. It is necessary to be vigilant with regard to the interpretation of the Directive; it is important, in particular, not to give rise to regional interpretations of the Geneva Convention which in the end would be more restrictive than the interpretation currently given by the Member States.

Justification

The aim is to supplement the Geneva Convention, which is the basic text of the international legal system for the protection of refugees, with adequate measures and implementing assistance for Member States.

Owing to their special situations in terms of migration flows, certain countries might be tempted to take more stringent measures, using the directive to interpret the Geneva Convention in a more restrictive manner.

Amendment 12
Article 2, letter (b)

(b) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28th July 1951, as supplemented by the New York Protocol of 31 January 1967;

(b) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28th July 1951, as supplemented ***and amended*** by the New York Protocol of 31 January 1967;

Justification

Some aspects of the Geneva Convention of 28 July 1951 were supplemented by the New York Protocol of 31 January 1967. A number of them, however, were radically altered, as illustrated by the new wording of paragraph 2 of Article 1(A).

Amendment 13

Article 2, letter (j), point (i)

(i) the spouse of the applicant or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples;

(j) "Family members" means, ***based on the principle of family unity***:

i) the spouse of the applicant or his/her unmarried partner, ***irrespective of sex***, in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried ***or same-sex couples and married*** couples in a ***corresponding manner***;

Justification

As today's society is open for a number of different family patterns, the definition of "family member" should be widened to include also same-sex couples.

The concept of 'family members' should be based on the principle of family unity. It should also include unmarried same-sex partners and children fostered by couples. This legislation should use a broad definition of the concept 'family member', since in today's society there are many different family set-ups, all of which should be treated equally and entail the same rights. Children who are accompanied by an applicant for political asylum are not automatically immune from persecution or reprisals just because they are married.

Amendment 14

Article 2, letter (j), point (ii)

(ii) the children of the couple referred to in point (i), ***or of the applicant alone***, on condition that they are unmarried and dependent and without distinction as to

(ii) the children of the couple referred to in point (i), ***children of the applicant as well as children of the applicant's spouse or stable partner***, on condition that they are

whether they were born in or out of wedlock or adopted;

unmarried and dependent and without distinction as to whether they were born in or out of wedlock adopted, **or fostered**;

Justification

According to this provision, the family unit of the applicant includes the children of the applicant as well as the children of the couple and children placed under the couple's guardianship (i.e. those of the applicant and his or her spouse or unmarried partner in a stable relationship), but does not include the children of the applicant's spouse or stable partner. This distinction is unjustified and should be corrected.

Amendment 15
Article 2, letter (j), point (iii)

(iii) other close relatives who lived together as part of the family unit at the time of leaving the country of origin, **and** who were wholly or mainly dependent on the applicant at that time

(iii) other close relatives who lived together as part of the family unit at the time of leaving the country of origin, **or** who were wholly or mainly dependent on the applicant at that time

Justification

For an equitable definition.

Amendment 16
Article 2, letter (k)

(k) "Accompanying family members" means the family members of the applicant who are present in the same Member State in relation to the application for asylum;

(k) "Accompanying family members" means the family members of the applicant who are present in the same Member State in relation to the application for asylum **and who have not themselves submitted an application for asylum**;

Justification

For avoiding confusion, particularly with respect to Article 6(1).

Amendment 17
Article 3a (new)

3a. Member States shall ensure that asylum-seekers are provided with all the necessary information and shall take special care to inform the members of a single family that they may submit separate applications for asylum.

Justification

Asylum-seekers should be provided from the start of the procedure with all the information they may require. Members of the same family, and especially women, should also be informed of their rights under the application for asylum and their right to submit an individual application for asylum independently from their spouse.

Amendment 18
Article 4

More favourable provisions

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person in need of subsidiary protection, and in determining the content of international protection, in so far as those standards are compatible with this Directive.

More favourable provisions

Member States may introduce or retain more favourable standards ***than those referred to in this Directive*** for determining who qualifies as a refugee or as a person in need of subsidiary protection, and in determining the content of international protection, in so far as those standards are compatible with this Directive.

This Directive may under no circumstances be used to amend more favourable provisions existing in the Member States.

Justification

This Directive must not lead to a reduction in the rights of refugees in the Member States, but merely defines minimum standards.

Amendment 19
Article 4a (new)

Article 4a

Any measures taken by Member States under this Directive must be taken with due respect for the rights of refugees and asylum-seekers within the framework of the 1951 UN Convention and according to the guidelines set out in the UNHCR Handbook, Article 3 of the European Convention on Human Rights, Article 3 of the UN Convention against Torture, Article 7 of the International Covenant on Civil and Political Rights or other international agreements.

Justification

Priority must be accorded to relevant international conventions. It is important for legal certainty and the protection of human rights to guarantee expressly the primacy of human rights instruments that set higher standards.

Amendment 20
Article 5, paragraph 1

1. Refugee status shall be granted to any third country national who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or,

1. Refugee status shall be granted to any third country national who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, ***gender, sexual orientation, membership of an ethnic group***, political opinion or membership of a particular social group, is

owing to such fear, is unwilling to avail himself or herself of the protection of that country, and to any stateless person, who, being outside the country of former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, and to any stateless person, who, being outside the country of former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

Justification

Women are the main victims of persecution, violence and discrimination. An explicit reference to 'gender' should be included in order to take due account of such persecution. It is important that account should be taken of these factors as grounds for a well-founded fear of persecution, and they should therefore be mentioned explicitly.

Amendment 21 Article 5, paragraph 3

3. The applicant's fear of being persecuted or exposed to other serious and unjustified harm in the country of origin shall be assessed in accordance with Section 2.

3. The applicant's fear of being persecuted or exposed to other serious and unjustified harm in the country of origin **or of residence** shall be assessed in accordance with Section 2.

Justification

The majority of persecuted persons migrate to countries bordering on their own. Their country of residence might also become a place of persecution. Unable to return to their country of origin and facing persecution in their country of residence, these persecuted persons should be able to apply for asylum in the Member States.

Amendment 22
Article 6, paragraph 1

1. Member States shall ensure that accompanying family members are entitled to the same status as the applicant for international protection.

1. Member States shall ensure that accompanying family members **and those who join the applicant later** are entitled to the same status as the applicant for international protection **unless that status is incompatible with their existing status.**

Justification

Whilst fleeing a country of persecution it may not be possible for families to remain together causing them to arrive in the Member State at different times. It is therefore essential that family members later joining the applicant are entitled to the same status for international protection. However, some family members may hold a different legal status in their own right, which may not be compatible with that of international protection: provision should be made for this.

Amendment 23
Article 7, introduction

In assessing an applicant's fear of being persecuted or exposed to other serious and unjustified harm, Member States shall **take into account, as a minimum**, the following matters:

In assessing an applicant's fear of being persecuted or exposed to other serious and unjustified harm, Member States shall **as a minimum base their decisions on** the following matters:

Justification

This is to make clear that decisions have to be based on all relevant facts and that the elements mentioned in the article form the minimum basis for the decision.

Amendment 24
Article 7, paragraph (-a) (new)

(- a) all relevant facts which have been furnished by the asylum applicant;

Justification

Paragraph 195 of the UNHCR Handbook states that the relevant facts of the individual case will have to be furnished in the first place by the applicant himself. Therefore it is necessary to include this reference, as the first element to be considered, in the text.

Amendment 25

Article 7, paragraph (-aa) (new)

(-aa) whether contradictory statements made by the asylum seeker are the result of traumatic experiences which are related to the reasons of his flight from the country where he fears for persecution;

Justification

In case of contradictory statements due to traumatic experiences the asylum seeker should be given the benefit of the doubt, as defined in international case law (a.o. European Commission on Human Rights, 23 April 1998, in Hatami vs Sweden and Committee Against Torture, 12 November 1998, in Ayas vs Sweden) and in the UNHCR Handbook, para. 203-204.

Amendment 26

Article 7, paragraph (d)

(d) the individual position and personal circumstances of the applicant, including factors such as background, **gender**, age, health and disabilities so as to assess the seriousness of persecution or harm. Where the form of persecution is **gender-specific or child-specific**, account shall be taken of the fact that persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or other **gender-specific** means;

(d) the individual position and personal circumstances of the applicant, including factors such as background, **sex, gender identity, sexual orientation**, age, health and disabilities so as to assess the seriousness of persecution or harm. Where the form of persecution is **specifically related to sex, gender identity, sexual orientation or being a child**, account shall be taken of the fact that persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or other means **specific to sex, gender-identity, sexual orientation or age**;

Justification

The Commission notes in the explanatory memorandum that sexual violence is a form of persecution that can be targeted specifically at women, depending on the nature of the violence. However, sexual violence is also a frequent source of persecution of lesbian women, gay men, bisexual and transgender persons and consequently gender identity and sexual orientation must be explicitly included in this subparagraph.

Amendment 27

Article 7, paragraph (e)

(e) whether there is credible evidence that laws or regulations are in force and applied in practice in the country of origin which authorise or condone the persecution of the applicant or the infliction upon the applicant of other serious and unjustified harm.

(e) whether there is credible evidence that laws, regulations *or customs* are in force and applied in practice in the country of origin which authorise or condone the persecution of the applicant or the infliction upon the applicant of other serious and unjustified harm.

Justification

The customs and traditions existing in a country or part of a country may in some cases be contrary to the law in force without any judicial action being taken. What is important is that the persecuted persons be assisted irrespective of the origin and/or cause of persecution.

Traditions and practices may result in serious and unjustified harm, particularly in the case of gender-specific harmful traditions and practices.

Amendment 28

Article 8, paragraph (2)

2. A well-founded fear of being persecuted or otherwise suffering serious unjustified harm may be based on activities which have been engaged in by the applicant since he left his country of origin, save where it is established that such activities were engaged in for the sole purpose of creating the necessary conditions for ***deleted***

making an application for international protection. That is not the case where the activities relied upon constitute the expression and continuation of convictions held in the country of origin, and they are related to the grounds for recognition of the need for international protection.

Justification

The principle for application of protection is whether the person consequently would face a risk to his or her life or liberty upon return, and is not primarily a question of how the risk comes about. There is no logical or empirical connection between the well-foundedness of the fear of being persecuted or of suffering serious unjustified harm, and the fact that the person may have acted in a manner designed to create a refugee claim.

Amendment 29 Article 9, paragraph 2

2. In evaluating the effectiveness of State protection where the threat of persecution or other serious unjustified harm emanates from non-State actors, Member States shall consider whether the State takes **reasonable** steps to prevent the persecution or infliction of harm, and whether the applicant has **reasonable** access to such protection. There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actions which constitute persecution or other serious and unjustified harm. Where effective State protection is available, fear of being persecuted or otherwise suffering serious unjustified harm shall not be considered to be well founded, in which case Member States shall not recognise the need for protection.

2. In evaluating the effectiveness of State protection where the threat of persecution or other serious unjustified harm emanates from non-State actors, Member States shall consider whether the State takes steps to prevent the persecution or infliction of harm, and whether the applicant has access to such protection. There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actions which constitute persecution or other serious and unjustified harm. Where effective State protection is available, fear of being persecuted or otherwise suffering serious unjustified harm shall not be considered to be well founded, in which case Member States shall not recognise the need for protection. ***For the system to offer effective protection, the State must be able and willing to operate it, such that there is no significant risk of persecution or other serious harm being realised.***

Justification

The steps to prevent persecution and the access to protection must be effective and genuine.

The effectiveness of State protective measures must be taken into account.

Amendment 30 Article 9, paragraph 3

3. For the purpose of this Directive, “State” *deleted*
protection may also be provided by
international organisations and stable
quasi-State authorities who control a
clearly defined territory of significant size
and stability, and who are able and willing
to give effect to rights and to protect an
individual from harm in a manner similar
to an internationally recognised State.

Justification

State like authorities are not and cannot be parties to international human rights instruments and therefore cannot be held accountable for non-compliance with international refugee and human rights obligations. Their lack of accountability in international law makes it impossible for persons living within their jurisdiction to hold them responsible at international level for ensuring that human rights standards are safeguarded. State-like authorities are often unable to claim undisputed control of a given territory on a continuous basis nor can they claim that they have the monopoly of exercise of legitimate power within the territory they control. By definition the preconditions necessary for political stability cannot be present in the case of state like authorities given that these are the very preconditions that are characteristic to statehood.

With regard to the role of international organisations providing "state" protection, recent history has highlighted the ineffectiveness of such organisations in maintaining peace and security and guaranteeing human rights in conflict areas. This is far from surprising to the extent that to date no international organisation has been given the broad political mandate that is necessary for guaranteeing the protection of human rights and fully ensuring law and order. The problems in Kosovo provide the most current example.

‘Non-State persecution’ cannot be included in this Directive.

Amendment 31
Article 10, title and second sentence of paragraph 1

Internal *protection*

In carrying out this examination there shall be a strong presumption ***against finding internal protection to be a viable alternative to international protection*** if the agent of persecution is, or is associated with the national government.

Internal *flight alternative*

In carrying out this examination there shall be a strong presumption ***in favour of international protection*** if the agent of persecution is, or is associated with the national government.

Justification

The question of an 'internal flight alternative', which has been approached in very different ways in the Member States, needs to be clearly defined. The Member States base their assessment on the report provided by their representation. Views on the situation in a particular region in crisis may differ considerably. Thus, people from the same region may obtain asylum in one Member State while others are refused asylum in another Member State. To avoid this situation, a common definition is needed for this situation of 'internal flight alternative'.

Amendment 32
Article 10, paragraph 2

2. In examining whether an applicant can be reasonably returned to another part of the country in accordance with paragraph 1, Member States shall have regard to the security, political and social circumstances prevailing in that part of the country, including respect for human rights, and to the personal circumstances of the applicant, including age, sex, health, family situation and ethnic, cultural and social links.

2. In examining whether an applicant can be reasonably returned to another part of the country in accordance with paragraph 1, Member States shall have regard to the security, political and social circumstances prevailing in that part of the country, including respect for human rights, and to the personal circumstances of the applicant, including age, sex, health, family situation and ethnic, cultural and social links.

Internal flight alternative have to fulfil the following criteria :

- the protection must be afforded by a de jure not just de facto authority.

- the absence of a risk of serious harm for a Convention reason in the proposed site of internal protection must be objectively established, rather than being considered

reasonably unlikely to occur;

- the claimant must be able to access the area of internal protection in safety and dignity and legally;

- the area of internal protection must be free from conditions which could force the rejected claimant back into the area where there is a risk of serious harm for a Convention reason, i.e. it must offer a durable protection alternative and provide effective protection from refoulement to the area where the person fears persecution;

- conditions in the area of internal protection must afford at least the same standard of protection of core human rights as the Refugee Convention does

Justification

The question of an 'internal flight alternative', which has been approached in very different ways in the Member States, needs to be clearly defined. The Member States base their assessment on the report provided by their representation. Views on the situation in a particular region in crisis may differ considerably. Thus, people from the same region may obtain asylum in one Member State while others are refused asylum in another Member State. To avoid this situation, a common definition is needed for this situation of 'internal flight alternative'.

Amendement 33

Article 11, paragraph 1, letter (a)

(a) the infliction of serious and unjustified harm or discrimination on the grounds of race, religion, nationality, political opinion or membership of a particular social group, sufficiently serious by its nature or repetition as to constitute a significant risk to the applicant's life, freedom or security or to preclude the applicant from living in his or her country of origin;

(a) the infliction of serious and unjustified ***physical or psychological*** harm or discrimination on the grounds of race, religion, nationality, ***sex, sexual orientation, membership of an ethnic group***, political opinion or membership of a particular social group, sufficiently serious by its nature or repetition as to constitute a significant risk to the applicant's life, ***physical integrity***, freedom or security ***or to respect for the fundamental rights of the person concerned*** or to preclude the applicant from living in his or her country of origin;

Justification

It is important that account should be taken of these factors as grounds for a well-founded fear of persecution, and they should therefore be mentioned explicitly. Particularly in the case of women and girls, protection of physical integrity must be guaranteed.

Amendment 34

Article 11, paragraph 1, letter (b)

(b) legal, administrative, police and/or judicial measures when they are designed or implemented in a discriminatory manner on the grounds of race, religion, nationality, political opinion or membership of a particular social group and if they constitute a significant risk to the applicant's life, freedom or security or preclude the applicant from living in his or her country of origin;

(b) legal, administrative, police and/or judicial measures when they are designed or implemented in a discriminatory manner on the grounds of race, religion, nationality, **sex, sexual orientation, membership of an ethnic group**, political opinion or membership of a particular social group and if they constitute a significant risk to the applicant's life, **physical integrity**, freedom or security **or to respect for the fundamental rights of the person concerned** or preclude the applicant from living in his or her country of origin;

Justification

It is important that account should be taken of these factors as grounds for a well-founded fear of persecution, and they should therefore be mentioned explicitly. Particularly in the case of women and girls, protection of physical integrity must be guaranteed.

Amendment 35

Article 11, paragraph 1, letter (c)

(c) prosecution or punishment for a criminal offence if, on the grounds of race, religion, nationality, political opinion or membership of a particular social group:

(c) prosecution or punishment for a criminal offence if, on the grounds of race, religion, nationality, **sex, sexual orientation, membership of an ethnic group**, political opinion or membership of a particular social

opinion or membership of a particular social group:

Justification

It is important that account should be taken of these factors as grounds for a well-founded fear of persecution, and they should therefore be mentioned explicitly.

Amendment 36

Article 11, paragraph 1, letter (c), point (i)

(i) the applicant is either denied means of judicial redress or suffers a disproportionate or discriminatory punishment

(i) the applicant is either denied means of judicial redress or suffers a disproportionate or discriminatory punishment ***or corporal or capital punishment***

Justification

If there is a threat that corporal or capital punishment may be applied in respect of the offence in the event of an applicant's being returned, they must not be returned, for humanitarian reasons.

Amendment 37

Article 11, paragraph 1, letter (c), point (ii)

(ii) the criminal offence for which the applicant is at risk of being prosecuted or punished purports to criminalise the exercise of ***a fundamental right***;

(ii) the criminal offence for which the applicant is at risk of being prosecuted or punished purports to criminalise the exercise of ***one of the fundamental rights defined in the Charter of Fundamental Rights of the European Union***;

Justification

Respect for fundamental rights must be based on the Charter of Fundamental Rights of the European Union and not on fundamental rights as set out in the laws and constitutions of third countries.

Amendment 38

Article 11, paragraph 1, letter (d), point (iia) (new)

(iia) in case of participation in military activities which are condemned by the international community;

Justification

Someone who refuses to participate in a military action condemned by the international community and who has a well-founded fear of being persecuted must be protected. According to paragraph 171 of the UNHCR Handbook in these situations no valid reasons of conscience are required.

Amendment 39

Article 12, introductory part

In determining whether a well founded fear of persecution is based on reasons of race, religion, nationality, political opinion or membership of a particular social group, the following elements shall, as a minimum, be taken in account:

In determining whether a well founded fear of persecution ***or serious harm*** is based on reasons of race, religion, nationality, ***sex***, political opinion or membership of a particular social group, the following elements shall, as a minimum, be taken in account:

Justification

Unjustified harm may also be gender-specific and should therefore be included in this article. The term 'social group' as defined in Article 1 of the Geneva Convention is not sufficient to confer refugee status on women who are victims of persecution or oppression on account of their sex. It has been found that, on account of their gender and for reasons arising from their being female, women are abused, tortured, subjected to violence and persecution, have their freedom restricted, live under the shadow of alienating and oppressive religious and/or social norms, and risk their lives if they violate them. Such treatment should be regarded as a public issue and should no longer be seen as being in the private domain; it is a political matter.

Amendment 40
Article 12, paragraph (c)

(c) the concept of nationality shall not be confined to ***citizenship*** but shall include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(c) the concept of nationality shall not be confined to ***citizenship or lack thereof*** but shall include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

Justification

Clarification.

Amendment by Jean Lambert

Amendment 41
Article 12, paragraph (d)

(d) the concept of social group shall include a group which may be defined in terms of certain fundamental characteristics, such as sexual orientation, age ***or*** gender, as well as groups comprised of persons who share a common background or characteristic that is so fundamental to identity or conscience that those persons should not be forced to renounce their membership. The concept

(d) the concept of social group shall include a group which may be defined in terms of certain fundamental characteristics, such as sexual orientation, age, gender, ***gender identity or health status*** as well as groups comprised of persons who share a common background or characteristic that is so fundamental to identity or conscience that those persons should not be forced to

shall also include groups of individuals who are treated as "inferior" in the eyes of the law;

renounce their membership. The concept shall also include groups of individuals who are treated as "inferior" in the eyes of the law;

Justification

In the interests of absolute clarity, we propose to add explicit reference to social groups defined by reference to gender identity or health status – for example, persons who are HIV positive or living with AIDS.

Amendment 42
Article 12, paragraph (e)

(e) the concept of political opinion shall include the holding of, or the being conceived of as holding, an opinion on a matter related to the State or its government or its policy, whether or not that opinion has been acted upon by the applicant.

(e) the concept of political opinion shall include the holding of, or the being conceived of as holding, an opinion, **thought or belief** on a matter related to the State or its government or its policy, whether or not that opinion has been acted upon by the applicant.

Justification

The present definition is unduly limited and does not reflect the true ambit of political opinion as reflected in the International Bill of Rights. It is the role of the Refugee Convention to protect fundamental human rights which include the freedom of opinion, thought, belief and expression. The Commission's proposal would not include instances of thought or belief that could not be classified as 'political'.

Amendment 43
Article 13, paragraph 1, point (e)

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; **unless his social, economic and family ties in the host country make his return to the country of origin difficult to**

envisage or where there are compelling reasons arising out of previous persecution for refusing to avail themselves of the protection of the country of nationality;

Justification

Experience shows that some refugees tend to spend long years in the host country, during which they establish ties. In deciding about cessation of refugee status, Member States must take due account of the situation of the refugees concerned and as the Commission's commentary highlights, there may be situations where past persecution makes it impossible for the individuals to return to their country of origin. In these circumstances, regardless of the length of residence in the Member States, cessation should not apply.

The current wording of article 13, § 1, sub (e), which is almost completely derived from article 1 C Refugee Convention (RC), is inconsistent with article 1 C (5) and (6) and the interpretation of these articles in paragraph 136 of the UNHCR Handbook. An addition to include this wording from the abovementioned article from the RC is therefore needed.

Amendment 44

Article 13, paragraph 1, point (f)

(f) Being a person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

(f) Being a person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence, ***provided that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of his former habitual residence;***

Justification

The current wording of Article 13, § 1, sub (f), which is almost completely derived from Article 1 C Refugee Convention (RC), is inconsistent with Article 1 C (5) and (6) and the interpretation of these articles in paragraph 136 of the UNHCR Handbook. An addition to include this wording from the abovementioned article from the RC is therefore needed.

Amendment 45
Article 13, paragraph 1, second sentence

In the cases referred to in points (a) to (f), the residence permit may be revoked.

In the cases referred to in points (a) to (f), the residence permit may be revoked.
Revocation of the residence permit should not take effect until at least 6 months after notification.

Justification

In order to give some security and predictability to the individual, at least 6 months must be given before the revocation of the residence permit.

Amendment 46
Article 13, paragraph 2

2. The Member State which has granted refugee status shall bear the burden of proof in establishing that a person has ceased to be in need of international protection for one of the reasons stipulated in paragraph 1.

2. The Member State which has granted refugee status shall bear the burden of proof in establishing that a person has ceased to be in need of international protection for one of the reasons stipulated in paragraph 1 ***and shall provide for appeal against the decision taken.***

Justification

Provision must be made for appeal against any decision.

Amendment 47
Article 13, paragraph 2a (new)

2a. The decision of cessation of refugee status shall be notified in writing to the national of the third country concerned. The notification shall indicate the means of appeal open to the person concerned and the time limits within which he can take such action.

Justification

It is important to strengthen and specify procedural rights.

Amendment 48

Article 14, paragraph 1, introductory phrase

1. Member States shall exclude from refugee status any applicant:

1. Member States shall, ***on an individual and exceptional basis***, exclude from refugee status any applicant:

Justification

Exclusion from refugee status must be an exceptional measure applying to a single individual.

Amendment 49

Article 14, paragraph 1, point (a)

(a) who is at present receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees; ***deleted***

Justification

See justification for Article 9, paragraph 3.

Amendment 50

Article 14, paragraph 1, point (c), introductory phrase

(c) where ***there are serious reasons for considering that:***

(c) where ***it is known that:***

Justification

Any exclusion from refugee status on grounds of the applicant's criminal behaviour must be based on certainties and not on a few serious reasons for 'considering'.

Amendment 51

Article 14, paragraph 1, point (ca) (new)

(ca) where a European arrest warrant has been issued against the person concerned;

Justification

The new European legal instrument provided by the European arrest warrant must be incorporated. Inter alia, this includes participation in terrorist activities as additional grounds for exclusion.

Amendment 52

Article 14, paragraph 1, point (c) (ia) (new)

(ia) has committed or is involved with terrorist offences, as referred to in Council Framework Decision of ... on combating terrorism.

Justification

Self-explanatory.

Amendment 53

Article 14, paragraph 1, letter (c), point (ii)

(ii) the applicant has committed a serious non-political crime prior to his or her admission as a refugee;

(ii) the applicant has committed a serious non-political crime prior to his or her admission as a refugee, ***unless the penalties provided for will result in the application of capital or corporal punishment***;

Justification

If there is a threat that corporal or capital punishment may be applied in respect of the offence in the event of an applicant's being returned, they must not be returned, for humanitarian reasons.

Amendment 54

Article 15, introductory phrase and paragraph (a)

In accordance with Article 5(2), Member States shall grant subsidiary protection *status* to an applicant for international protection who is outside his or her country of origin, and cannot return there ***owing to a well-founded fear of being subjected to the following serious and unjustified harm:***

In accordance with Article 5(2), Member States shall grant subsidiary protection *status* to an applicant for international protection who is outside his or her country of origin, and cannot return there ***for reasons outside the scope of Article 5(1) and owing to:***

(a) torture or inhuman or degrading treatment or punishment; or

a) the risk of being subjected to torture or inhuman or degrading treatment or capital punishment; or sexual mutilation; or

Justification

Subsidiary protection fulfils an important protection function primarily for those fleeing the indiscriminate effects of violence and the accompanying disorder in a conflict situation, with no element of persecution or link to a specific Convention ground. In setting out the grounds for subsidiary protection, these should explicitly clarify that these only come into play when an examination of the claim has led to the conclusion that an applicant does not qualify for refugee status under the 1951 Convention and the 1967 Protocol.

Violation of physical integrity by means of genital mutilation should also be grounds for an application for asylum.

Amendment 55
Article 15, paragraph (b)

(b) violation of a human right, sufficiently severe to engage the Member State's international obligations or;

(b) violation of a human right, sufficiently severe to engage the Member State's international obligations or; ***including indiscriminate threats to life, physical integrity or liberty resulting from generalised violence or events seriously disturbing public order;***

Justification

See justification to Article 15, paragraph (a).

Amendment 56
Article 15, paragraph (c)

(c) a threat to his or her life, safety or freedom as a result of indiscriminate violence arising in situations of armed conflict, or as a result of systematic or generalised violations of their human rights.

(c) a threat to his or her life, ***physical integrity***, safety or freedom as a result of indiscriminate violence arising in situations of armed conflict, or as a result of systematic or generalised violations of their human rights.

Justification

Physical integrity, particularly of a gender-specific nature, must be protected.

Amendment 57
Article 15, paragraph (ca) (new)

***(ca) serious and/or persistent
discrimination on any of the grounds
mentioned in Article 35.***

Justification

In order to make clear that any discriminatory treatment is an unjustified harm.

Amendment 58
Article 16, paragraph 1

1. Member States shall ensure that subsidiary protection status is maintained until such time as it is established by the competent authorities that such protection is no longer required, in which case the residence permit may be revoked.

1. Member States shall ensure that subsidiary protection status is maintained until such time as it is established by the competent authorities that such protection is no longer required, in which case the residence permit may be revoked.

Revocation of the residence permit should not take effect until at least 6 months after notification.

Justification

In order to give some security and predictability to the individual, at least 6 months must be given before the revocation of the residence permit.

Amendment 59
Article 16, paragraph 2

2. Subsidiary protection may be withdrawn if the circumstances in the country of origin which led to the granting of such status under Article 15 cease to exist, or if a

2. Subsidiary protection may be withdrawn if the circumstances in the country of origin which led to the granting of such status under Article 15 cease to exist, or if a

change in circumstances is of such a profound and durable nature that it eliminates the need for subsidiary protection.

change in circumstances is of such a profound and durable nature that it eliminates the need for subsidiary protection, ***unless the applicant's social, economic and family ties in the host country make his return to the country of origin difficult to envisage or where there are compelling reasons arising out of previous persecution for his refusing to avail himself of the protection of the country of nationality.***

Justification

Experience shows some that refugees tend to spend long years in the host country, during which they establish ties. In deciding about cessation of refugee status, Member States must take due account of the situation of the refugees concerned and as the Commission's commentary highlights, there may be situations where past persecution makes it impossible for the individuals to return to their country of origin. In these circumstances, regardless of the length of residence in the Member States, cessation should not apply.

Amendment 60

Article 16, paragraph 2a (new)

2a. It shall be for the Member State which has granted the subsidiary protection status to prove that a person has ceased to require international protection for one of the reasons set out in paragraph 2.

Justification

The burden of proof for the cessation of subsidiary protection must lie with the Member State.

Amendment 61

Article 16, paragraph 2 b (new)

2b. Member States shall ensure that persons who are excluded on these grounds have the right to lodge an appeal against a decision to deny them subsidiary protection.

Justification

Provision must be made for appeal against any decision.

Amendment 62

Article 17, paragraph 1, introductory phrase

1. Member States shall exclude from subsidiary protection status any applicant where ***there are serious reasons for considering that:***

1. Member States shall exclude from subsidiary protection status, on an individual and exceptional basis, any applicant where ***it is known that:***

Justification

Any exclusion from subsidiary protection status on grounds of the applicant's criminal behaviour must be based on certainties and not on serious reasons for 'considering'.

Exclusion from refugee status must be an exceptional measure applying to a single individual.

Amendment 63

Article 17, paragraph 1, point (b)

(b) the applicant has committed a serious non-political crime prior to his or her admission as a refugee;

(b) the applicant has committed a serious non-political crime prior to his or her admission as a refugee, ***unless there is provision for a sentence of corporal or capital punishment for the crime;***

Justification

If there is a threat that corporal or capital punishment may be applied in respect of the offence in the event of an applicant's being returned, they must not be returned, for humanitarian reasons.

Amendment 64
Article 18, paragraph 3

3. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of persons who have special needs such as: minors in general, unaccompanied minors, disabled people, elderly people, single parents with minor children, victims of torture or sexual abuse or exploitation, pregnant women and persons suffering from infirmity, whether mental or physical. Member States shall also take into account the specific situation of **single** women who are subject to substantial gender-related discrimination in their country of origin.

3. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of persons who have special needs such as: minors in general, unaccompanied minors, disabled people, elderly people, single parents with minor children, victims of torture or sexual abuse or exploitation, pregnant women and persons suffering from infirmity, whether mental or physical. Member States shall also take into account the specific situation of women who are subject to substantial gender-related discrimination in their country of origin.

Justification

There is no reason why single women should require more protection than women in general. In many countries, particularly in conflict situations, women are the first victims of persecution and discrimination.

Amendment 65
Article 20

Information

Member States shall provide persons recognised as being in need of international protection, immediately after status has been granted, with information, **in a language likely to be understood by them**, in which provisions relating to the respective protection regimes are clearly set out.

Information

Member States shall provide persons recognised as being in need of international protection, immediately after status has been granted, with information, **in writing and in a language which they understand**, in which provisions relating to the respective protection regimes are clearly set out.

Justification

Harmonisation of the wording between the directives in the same field -See Articles 7(a),(e) and (f) of the proposal, COM(2000)578 final.

Member States must inform applicants for international protection in writing and in a language they understand. It is important that applicants fully understand the information provided by the Member States.

Amendment 66
Article 21, paragraph 2

2. As soon as the status has been granted Member States shall issue to persons enjoying subsidiary protection status and their accompanying family members a residence permit which must be valid for at least *one* year. ***This residence permit shall be automatically renewed at intervals of not less than one year, until such time as the granting authorities establish that such protection is no longer required.***

2. As soon as the status has been granted Member States shall issue to persons enjoying subsidiary protection status and their accompanying family members a residence permit which must be valid for at least *five* years ***and automatically renewable.***

Justification

Residence permits for persons enjoying subsidiary protection should be issued on the same conditions as for refugees.

Persons with complementary protection status should be treated in terms of duration of protection in the same way as Refugee Convention refugees bearing in mind that both categories of protected persons have similar needs and circumstances and that successful integration into the asylum country requires a status that enables persons to develop a sense of long-term perspective for the future.

Amendment 67
Article 23, paragraph 2

2. Member States shall issue travel documents to persons enjoying subsidiary protection status ***who are unable to obtain a national passport.***

2. Member States shall issue travel documents to persons enjoying subsidiary protection status ***under the same conditions as those referred to in paragraph 1.***

Justification

In terms of human rights, there are no grounds for justifying different treatment.

Amendment 68
Article 24, paragraph 2

2. Member States shall ensure that activities such as ***employment-related*** education opportunities for adults, vocational training ***and*** practical workplace experience are offered to refugees, under the same conditions as nationals.

2. Member States shall ensure that activities such as education opportunities for adults, vocational training, practical workplace experience ***and child care*** are offered to refugees, under the same conditions as nationals.

Justification

Access to child care is often necessary to be able to access education or to gain workplace experience. Access to education should not be restricted only to employment-related activities.

Amendment 69
Article 24, paragraph 3

3. Member States shall authorise persons enjoying subsidiary protection status to engage in employed or self-employed activities under the same conditions as nationals ***no later than six months after*** such status is granted.

3. Member States shall authorise persons enjoying subsidiary protection status to engage in employed or self-employed activities under the same conditions as nationals ***as soon as*** such status is granted.

Justification

Employment restrictions upon status determination seriously hinder refugee integration in the long term as they risk pushing people into illegal work or encouraging dependency on public assistance. The restrictions in relation to access to vocational training have the negative effect of delaying considerably the process of acquisition of the skills and knowledge by persons in need of international protection that are necessary to access the labour market and live independently.

Amendment 70 Article 24, paragraph 4

4. Member States shall ensure that persons enjoying subsidiary protection status have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under the same conditions as nationals ***no later than one year after*** such status is granted.

4. Member States shall ensure that persons enjoying subsidiary protection status have access to activities such as employment-related education opportunities for adults, language-learning opportunities, vocational training and practical workplace experience, ***and child care*** under the same conditions as nationals ***as soon as*** such status is granted.

Justification

Employment restrictions upon status determination seriously hinder refugee integration in the long term as they risk pushing people into illegal work or encouraging dependency on public assistance. The restrictions in relation to access to vocational training have the negative effect of delaying considerably the process of acquisition of the skills and knowledge by persons in need of international protection that are necessary to access the labour market and live independently.

Access to child care is often necessary to be able to access education or to gain workplace experience. Access to education should not be restricted only to employment-related activities.

Amendment 71
Article 25, paragraph 1

1. Member States shall grant full access to the education system to all **those** minors **enjoying** international protection under the same conditions as nationals.

1. Member States shall grant full access to the **mainstream** education system to all minors **whether or not they enjoy** international protection **and whatever their place of accommodation or placement** under the same conditions as nationals **and ensure that they are covered by rules on compulsory schooling.**

Justification

Rules on compulsory schooling will guarantee that minor boys and girls enjoying international protection are not segregated but attend mainstream schools on the same conditions as nationals.

The right to education is enshrined in Article 14 of the Charter of Fundamental Rights. It is important that all minors, whatever their status, have access to education. International protection application procedures may take a long time. It is therefore important that all minors attend school and prepare their future.

Amendment 72
Article 25, paragraph 2

2. Member States shall allow adults enjoying international protection access to the general education system, further training or retraining, under the same conditions as nationals.

2. Member States shall allow adults enjoying international protection access to the general education system, further training, **in particular language learning**, or retraining, under the same conditions as nationals.

Justification

It is vital that those receiving international protection integrate in their host country. This integration can be achieved through education, but above all by learning the language of the host country.

Amendment 73
Article 27, paragraph 2

2. Member States shall provide appropriate medical and psychological care to persons enjoying international protection who have special needs, such as accompanied or unaccompanied minors, or persons **who have undergone** torture, rape or other serious forms of psychological, physical or sexual violence.

2. Member States shall provide appropriate medical and psychological care to persons enjoying international protection who have special needs, such as accompanied or unaccompanied minors, **pregnant women, elderly persons, mentally or otherwise disabled persons** or persons who have **been victims of** torture, **trafficking in human beings**, rape or other serious forms of psychological, physical or sexual violence.

Justification

It is logical to provide for special care in cases resulting from particular circumstances.

Women and minors are the first victims of persecution and other forms of inhuman treatment.

Amendment 74
Article 27, paragraph 3

3. Member States shall ensure access to rehabilitation services to minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict. To facilitate recovery and reintegration, appropriate mental health care shall be developed and qualified psycho-social counselling shall be provided when it is needed.

3. Member States shall ensure access to rehabilitation services to minors **and women** who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict. To facilitate recovery and reintegration, appropriate mental health care shall be developed and qualified psycho-social counselling shall be provided when it is needed.

Justification

Women are the first victims of violence, exploitation and abuse. It is therefore important that they should have preferential access to specialist help and care in respect of the violence, exploitation and abuse to which they have been subjected.

Amendment 75
Article 28, paragraph 2

2. Member States shall ensure that the minor's needs are duly met in the implementation of the provisions of this Directive by the appointed guardian. The appropriate authorities shall make **regular** assessments.

2. Member States shall ensure that the minor's needs are duly met in the implementation of the provisions of this Directive by the appointed **legal** guardian. The appropriate authorities shall make assessments **at least once a year**.

Justification

It is essential that minors are provided with a legal guardian; this should not be an optional requirement. Representation by an organisation or any other appropriate representation should be additional to legal guardianship and not an alternative. The absence of legal guardianship can impede a person or an organisation from acting in the best interests of the child.

The situation of unaccompanied minors must be given serious consideration. Proper consideration of the child's well-being requires an assessment to be carried out at least once a year. This will enable the necessary steps to be taken swiftly to protect the minor's well-being, should a difficulty arise.

Amendment 76
Article 28, paragraph 3, first sentence

3. Member States shall ensure that unaccompanied minors are placed:

3. Member States shall ensure that unaccompanied minors are placed **in the following, in order of priority, and taking due account of the minors' best interest**.

Justification

Self-explanatory.

The best interest of the child is paramount when selecting the type of accommodation.

Member States should take all the necessary steps to find a solution which is in the child's interest. It is therefore important that preference be given to placing a child with a member of his family. If this is not possible, it is essential that he be placed, in order of preference, with a foster family, in a specialised centre or, as a last resort, in other accommodation suitable for minors.

Amendment 77

Article 28, paragraph 3, point (c)

(c) in centres specialised in accommodation for minors; or

(c) in centres specialised in accommodation for minors ***which provide adequate protection***; or

Justification

These centres must care for and protect minors in such a way that they can integrate into society more easily afterwards and do not end up as prostitutes.

Amendment 78

Article 28, paragraph 6

6. Member States shall ensure that those working with unaccompanied minors receive appropriate training on ***their*** needs.

6. Member States shall ensure that those working with unaccompanied minors receive appropriate ***specialised*** training on ***the needs of such minors and that they are obliged to treat as confidential any information which comes into their possession in the exercise of their duties.***

Justification

It is important to specify that the confidentiality rule applies to the information which such persons receive in the exercise of their duties.

The amendment also highlights the fact that people who look after minors in a professional capacity must be provided with specialised training.

Amendment 79

Article 28, paragraph 6a (new)

6a. All decisions affecting minors shall be taken in accordance with the best interests of the child and the UN Convention on the Rights of the Child. There shall be no discrimination against any child or his or her parents on any ground such as of sex, gender identity, race, nationality, membership of a particular social group, health, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

Justification

Minors require special protection and the basis of the principles underlying this should be the UN Convention on the Rights of the Child. The areas of non-discrimination should be widely drawn in order to protect the maximum possible number, yet should not be an exhaustive list as this might preclude protection where it should be offered.

Amendment 80

Article 28, paragraph 6b (new)

6b. Member States shall ensure that all minors, irrespective of their place of accommodation or placement and whatever their status, have access to the same education and training programmes as provided by the Member States for their nationals.

Justification

The right to education is enshrined in Article 14 of the Charter of Fundamental Rights. It is important that all minors, whatever their status and place of accommodation, be entitled to education and training, international protection applications may take a long time before a decision is taken on a person's status. It is essential that minors be enabled to continue their education and to prepare the future during this period.

Amendment 81
Article 31, paragraph 1

1. In order to facilitate the integration of refugees into society, Member States shall make provision for specific support programmes tailored to their needs in the fields of, inter alia, employment, education, healthcare and social welfare;

1. In order to facilitate the integration of refugees into society, Member States shall make provision for specific support programmes tailored to their needs in the fields of, inter alia, **language learning**, employment, education, healthcare and social welfare, **not later than one year after their status is granted**;

Justification

There is no seriously justified reason to treat refugees and persons enjoying subsidiary protection status in a different way.

Experience shows that learning the language is the most difficult and most important precondition for successful integration;

Amendment 82
Article 31, paragraph 2

2. Member States shall grant persons enjoying subsidiary protection access to equivalent **programmes not later than one year after** their status is granted.

2. Member States shall grant persons enjoying subsidiary protection access to equivalent **as soon as** their status is granted.

Justification

Immediate access to integration services upon status determination is very important for promoting independence and facilitating refugee participation in all aspects of the economic, social, cultural, civil and political life of the country of asylum.

Amendment 83
Article 33, second paragraph

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities ***and with the UNHCR.***

Justification

It is important to include the UN in cooperation between the EU Member States.

Amendment 84
Article 34, paragraph 1

1. Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants and their accompanying family members, as well as the specific needs of minors, in particular unaccompanied minors.

1. Member States shall ensure that authorities, ***civil servants, interpreters*** and other organisations implementing this Directive have received the necessary ***specialised and appropriate*** basic training with respect to the needs of both male and female applicants and their accompanying family members, as well as the specific needs of minors, in particular unaccompanied minors, ***disabled persons and traumatised persons. They shall be obliged to treat as confidential any information which comes into their possession in the exercise of their duties..***

Justification

It is important to specify that the confidentiality rule applies to the information which such persons receive in the exercise of their duties.

The amendment also highlights the fact that people who look after asylum seekers, and especially minors, in a professional capacity must be provided with specialised training.

All officials and persons working with asylum seekers should be provided with training (psychological, communication, etc.) enabling them to respond to their needs.

Amendment 85

Article 35

Member States shall implement the provisions of this Directive without discrimination on **the basis** of sex, race, nationality, membership of a particular social group, health, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

Member States shall implement the provisions of this Directive without discrimination on **any ground such as** sex, **gender identity**, race, nationality, membership of a particular social group, health, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

Justification

The non-discrimination clause should be a non-exhaustive list of grounds, following the example in Article 21(1) of the Charter of Fundamental Rights.

Amendment 86

Article 36

By 30 April 2006 at the latest, 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. Member States shall send the Commission all the information that is appropriate for drawing up that report. After

By 30 April 2006 at the latest, 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. Member States shall send the Commission all the information that is appropriate for drawing up that report. 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.

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 **three** years.

Justification

The time limit of five years is too long. The Commission should report to the European Parliament at least every three years.

Amendment 87
Article 36a (new)

Article 36a.

Penalties

Member States shall determine the system of penalties to be applied to violations of the national provisions adopted in compliance with this Directive, and shall take all the necessary measures to ensure that they are implemented. Such penalties shall be effective, proportional and dissuasive. Member States shall notify the Commission of these provisions no later than on the date referred to in Article 37 and shall immediately inform it of any subsequent amendment thereto.

Justification

A system of penalties is obviously necessary for possible violations of the laws, regulations and administrative provisions adopted by the Member States in complying with this Directive.

Amendment 88
Article 37, paragraph 1, first sentence

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **30 April 2004** at the latest.

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **30 June 2003** at the latest.

They shall forthwith inform the Commission thereof.

They shall forthwith inform the Commission thereof.

Justification

The time frame set in the Commission proposal is too long, given the urgent need for a Common European Asylum Policy to come into force.

EXPLANATORY STATEMENT

INTRODUCTION

The Tampere European Council meeting of October 1999 agreed that, with regard to the Common European Asylum System, it should include:

The approximation of rules on the recognition and content of refugee status and that it should be complemented by measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.

This proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM (2001) 510 final) under Article 63 of the Amsterdam Treaty completes the Commission's proposed set of "building blocks" which together constitute the first step of the Common European Asylum System. It is the last in the series of Directives, although of crucial importance.

THE COMMISSION'S PROPOSAL

Generally, your rapporteur feels that the Commission's proposal is to be welcomed. It has resulted from a period of intense consultation with member states and practitioners in the field of asylum policy. It covers many of the issues that have arisen over the years in the area of international protection as the concept of human rights has developed along with court rulings on the implementation of those obligations.

This Directive is the first major attempt to provide a clear set of criteria that governs both protection under the Refugee Convention and other forms of protection due under international human rights law. Effectively, it offers two types of "international protection" – refugee status and subsidiary protection. It does not cover those people whom member states currently allow to stay for compassionate or humanitarian reasons: this Directive deals only with the need for protection from the behaviour of human agents.

The proposals take into account a full interpretation of the 1951 Geneva Convention and the 1967 Protocol as well as Court rulings resulting from the European Convention on Human Rights and other international instruments. Thus, there is consideration and clarification of the agent of persecution. The Commission takes the view that this should include not only the state and its agents but also circumstances where the state has been unwilling or unable to afford protection. This would cover circumstances such as those in Zimbabwe, for example, where the state has not only been implicated in acts of violence and intimidation but where it has not enforced court rulings. Colombia's inability to protect its citizens from the actions of FARC and para-military organisations would also be covered under the Commission's proposals.

The Commission also proposes the introduction of a category of subsidiary international protection that would be complementary to that of refugee. Your rapporteur supports the Commission's insistence that subsidiary protection is not a substitute for refugee protection but a welcome addition to it. This would provide protection for those who do not fulfil the Geneva Convention refugee definition but who nevertheless are at risk of treatment contrary

to (within Europe) Article 3 of the European Convention of Human Rights, for example. Such people should only be assessed for subsidiary protection status if they do not qualify for refugee status: crucially, assessment must be on a case-by-case basis.

The Commission takes the view, which your rapporteur supports, that there are forms of persecution that may be child specific and that children can be granted refugee status in their own right. However, if the best interests of the child are to be taken into account, as the Commission recalls in its recitals and your rapporteur makes specific in an amendment, this has implications for the definition of family and the right of family reunification. The issue is not helped by Council's delay in dealing with the appropriate Directive. The definition needs to be as wide as possible: many children from conflict zones may not have surviving parents, but they do have members of their extended family who will be crucial to their future. In many societies, the narrow nuclear definition is not the reality. One of the factors which destroys the lives of many young refugees is psychiatric illness, aggravated by isolation: extended family reunion is a necessity for healthy communities which can then play an active role in their country of protection.

Your rapporteur welcomes the recognition of the gender dimension in terms of qualification for international protection and the Commission's view that this may be specific or multi-dimensional as when women are singled out for persecution due to their religion (Moslem women in the Balkans) or ethnic background, as in Rwanda. While the list of factors mentioned is indicative rather than exhaustive (in Article 7 for example), your rapporteur feels it is important to ensure that sexual orientation and identity are also included, especially as this area is included in the assessment of the Copenhagen Criteria for accession countries by the European Parliament.

SCOPE

The proposed Directive is intended to deal only with third-country nationals and stateless persons: citizens of the European Union are excluded. Your rapporteur cannot agree with this limited scope for a number of reasons.

If the EU member states are as safe as the Commission believes, restoring the scope of the proposed Directive to cover simply "person or person" carries no risk and maintains our international obligations. If the EU member states are not safe, then the provision is needed.

Some of the accession and candidate countries are still the source of a number of asylum applications. What will happen to those new EU citizens in perhaps a matter of months if they have no right to claim international protection within the EU? We must remember that there is not an absolute right to freedom of movement within the Union and that the ECJ is limited in scope.

This provision is not in line with Article 1a of the Geneva Convention itself and excludes EU citizens from claiming asylum in a neighbouring state: whether or not one believes that EU citizens might need to avail themselves of that right is irrelevant – this Directive, as proposed, deprives them of that right. This is a dangerous signal to the international community and would set an unwelcome precedent. The EU member states, as individual signatories to the Geneva Convention, may decide to mutually exempt themselves from the provisions of this

international agreement because they judge that it cannot apply to their citizens – however large the EU may be and whatever political forces may be elected in it. What are other countries and governments to conclude from such an action?

UNHCR tells us that the scope of the refugee definition embodied in these binding international treaties cannot be reserved from (opted out of), by virtue of the provisions in Article 42 of the Convention; nor can the provisions of the Convention be restricted on grounds of nationality, by virtue of the non-discrimination principle enshrined in its Article 3.

PROTECTION BY “STABLE QUASI-STATE AUTHORITIES

In Article 9.3, the Commission includes as an agency of protection “stable quasi-state authorities”, with a qualifying definition. Your rapporteur can understand the desire to provide effective alternatives but believes it to be unwise to provide such bodies with a legal duty, when their legal status is unclear. This could lead to a lack of effective redress for individuals who may then suffer persecution. States are subject to international obligations and hold sovereign power: interim administrations do not and it would be unwise to mix the two. Are bodies such as the UNHCR happy to see such possibilities included in such international legislation? Recent history indicates that there are problems in providing a sufficient political mandate for such bodies to be able to operate as effectively as would be wished. Hence, your rapporteur is recommending the deletion of this provision.

THE DIFFERENCE IN ENTITLEMENTS BETWEEN THE TWO FORMS OF PROTECTION

The Commission makes provision for greater entitlements to those with refugee status in terms of residence permits (5 years: 1 year Article 15); access to employment (immediate as compared to 6- 12 months, Article 24) and access to integration facilities (immediate as compared to one year, Article 31). A differential is not sought in other areas.

The division seems predicated on the belief that those with subsidiary protection will be more likely to stay for a short period. Your rapporteur feels that the case for this is not adequately argued and that this difference thus seems arbitrary, especially as the status’ are complementary rather than hierarchical. Refugees and those with other forms of protection do not generally wish to be dependent on benefits, they wish to have dignity within a community and that derives from work and the ability to participate. Preventing people from working seems to run counter to the Union’s attitude to social inclusion and its employment policies. It also seems sensible to maintain and improve people’s skills and education levels so that, when they are able to return, they have even more to contribute to their countries. Thus, your rapporteur is recommending parity of treatment.

OTHER ISSUES

Your rapporteur has made a number of other recommendations for amendment but wishes to point to some missing elements in the current asylum policy overall as proposed.

Many people point to the number of rejected claims by asylum seekers as evidence of bad faith by the people concerned, although many cases are accepted on appeal, where adequate

provision for appeal from within the member states is possible. Yet little attention has been paid to the quality of the decision-making itself and the country and regional evidence taken in to account. Your rapporteur welcomes Parliament's continuing interest in the issue of training. Nor is there any mechanism for tracking what happens to those whose claims are refused and they are deported, which would also act as check on the quality of decision making.

Equally, while current definitions of asylum seekers deal only with those suffering persecution, or the fear of it, at the hands of human agents, we are ignoring the growing number of people who are forced to leave their homes due to poverty and environmental degradation. These people equally need protection and there is an urgent need to devise the appropriate instruments and policies of prevention. Maybe that should provide step 2 of a Common European Asylum Policy.

5 June 2002

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 for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection
(COM(2001) 510 – C5-0573/2001 – 2001/0207(CNS))

Draftsperson: Olga Zrihen Zaari

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Olga Zrihen Zaari draftsperson at its meeting of 26 February 2002.

It considered the draft opinion at its meetings of 21 May 2002 and 4 June 2002.

At the last meeting it adopted the following amendments by 16 votes to 7.

The following were present for the vote: Anna Karamanou, chairperson; Marianne Eriksson, vice-chairperson; Olga Zrihen Zaari, draftsperson; Ilda Figueiredo, Geneviève Fraisse, Fiorella Ghilardotti, Lissy Gröner, María Izquierdo Rojo, Christa Kläß, Rodi Kratsa-Tsagaropoulou, Maria Martens, Emilia Franziska Müller, Amalia Sartori, Miet Smet, Patsy Sörensen, Joke Swiebel, Helena Torres Marques, Feleknas Uca, Elena Valenciano Martínez-Orozco, Lousewies van der Laan, Anne E.M. Van Lancker, Sabine Zissener and Dieter-Lebrecht Koch (for James L.C. Provan pursuant to Rule 153(2)).

SHORT JUSTIFICATION

As Europe has developed over the last 50 years or so into an area of freedom, democracy, peace and economic progress, our countries have attracted an increasing number of seekers of asylum and international protection, fleeing situations of crises, war and human rights violations.

In the Charter of Fundamental Rights, we have recognised the right of all these people to asylum, on the basis of the implementation of the 1951 Geneva Convention relating to the status of refugees, supplemented by the 1967 New York Protocol.

This proposal for a Council directive on minimum standards for qualification as refugees or as persons needing international protection is part of a set of legislative measures aimed at establishing 'an area of freedom, security and justice' in Europe.

With a view to establishing greater coherence in the regulations and laws of Member States and defining basic common standards, this proposal for a directive lays down minimum standards relating to the definition and content of refugees status. This harmonisation should not contribute to a more stringent application of standards for granting refugee status. It is essential to move forward and avoid an intolerant 'fortress Europe' attitude towards persecuted and threatened people.

In many of the countries from which asylum-seekers come, women's rights are violated. Women are particularly affected by persecution, discrimination and violence.

In order to take more specific account of the situation of women and girls, the rapporteur feels that explicit reference must be made as frequently as possible to gender among the reasons for persecution, violence and discrimination.

The situation of women should also be taken into account with regard to access to education and training in the host country and, in particular, learning the language of that country. As a result of habit and lack of familiarity with the host country, women's contacts are often limited to members of their community and they tend to have difficulty in integrating. Yet they are at the heart of the family structure and are essential to their children's education. Their training is a key factor in the integration of the family as a whole.

Similarly, supervisory staff, interpreters and administration officials who implement this directive must be trained to meet the specific needs of women seeking asylum and to understand what they have been through, without any preconceived ideas.

We have also looked closely at the specific situation of minors and unaccompanied minors.

The right to education is enshrined in Article 14 of the Charter of Fundamental Rights. In some cases, this basic right of children to schooling would seem to be neglected. It is therefore essential for the children's future, well-being, potential for adjustment and full exercise of their citizens' rights that they be provided with an education and/or training appropriate to their needs and standards, whatever their status and place of accommodation.

Moreover, unaccompanied minors should, for their own good, be allowed to live with a member of their family. Special centres for minors should only be used as a last resort.

Minimum standards for the granting of refugee status or international protection must not be considered merely as a means of survival for asylum-seekers. They have a right to the provision of the conditions required for full citizenship, which is indicative of the level of democracy and respect for human rights in the host country.

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 Commission¹

Amendments by Parliament

Amendment 1
Recital 15 a (new)

(15a) In particular, when assessing applications for refugee status, Member States must take account of persecution and/or fears of persecution particular to women on account of their sex.

¹ OJ C 051, 26.02.2002, p. 325.

Justification

The term 'social group' as defined in Article 1 of the Geneva Convention is not sufficient to confer refugee status on women who are victims of persecution or oppression on account of their sex. It has been found that, on account of their gender and for reasons arising from their being female, women are abused, tortured, subjected to violence and persecution, have their freedom restricted, live under the shadow of alienating and oppressive religious and/or social norms, and risk their lives if they violate them. Such treatment should be regarded as a public issue and should no longer be seen as being in the private domain; it is a political matter.

Amendment 2 Recital 16

(16) In particular, it is necessary when assessing applications from minors for international protection that Member States should have regard to child-specific forms of persecution, such as the recruitment of children into armies, trafficking for sex work, and forced labour.

(16) In particular, it is necessary when assessing applications from minors, **women or girls**, for international protection that Member States should have regard to child-specific forms of persecution, such as the recruitment of children into armies, trafficking for sex work, and forced labour, **and violence and persecution specific to women and girls, such as prostitution, sexual violence and genital mutilation.**

Justification

Women and girls are, by their nature, the main victims of persecution and violence. It is therefore very important to take specific account of women and girls when assessing applications for international protection.

Amendment 3 Article 2, paragraph j, subparagraphs (i) and (ii)

(j) "Family members" means:

(i) the spouse of the applicant or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried

(j) "Family members" means, **based on the principle of family unity:**

(i) **irrespective of gender**, the spouse of the applicant or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned

couples in a way comparable to married couples;

(ii) the children of the couple referred to in point (i) or of the applicant alone, on condition that they are **unmarried and** dependent and without distinction as to whether they were born in or out of wedlock **or** adopted;

treats unmarried **or same-sex couples and married** couples in a **corresponding manner**;

(ii) the children of the couple referred to in point (i) or of the applicant alone, on condition that they are dependent and without distinction as to whether they were born in or out of wedlock, adopted **or fostered**;

Justification

The concept of 'family members' should be based on the principle of family unity. It should also include unmarried same-sex partners and children fostered by couples. This legislation should use a broad definition of the concept 'family member', since in today's society there are many different family set-ups, all of which should be treated equally and entail the same rights. Children who are accompanied by an applicant for political asylum are not automatically immune from persecution or reprisals just because they are married.

Amendment 4 Article 3, paragraph 1 (new)

1. Member States shall ensure that asylum-seekers are provided with all the necessary information and shall take special care to inform the members of a single family that they may submit separate applications for asylum.

Justification

Asylum-seekers should be provided from the start of the procedure with all the information they may require. Members of the same family, and especially women, should also be informed of their rights under the application for asylum and their right to submit an individual application for asylum independently from their spouse.

Amendment 5 Article 5, paragraph 1

1. Refugee status shall be granted to any third country national who, owing to well-founded fear of being persecuted for

1. Refugee status shall be granted to any third country national who, owing to well-founded fear of being persecuted for

reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, and to any stateless person, who, being outside the country of former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

reasons of race, religion, nationality, **gender, sexual orientation, membership of an ethnic group**, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, and to any stateless person, who, being outside the country of former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

Justification

Women are the main victims of persecution, violence and discrimination. An explicit reference to 'gender' should be included in order to take due account of such persecution. It is important that account should be taken of these factors as grounds for a well-founded fear of persecution, and they should therefore be mentioned explicitly.

Amendment 6 Article 7, paragraph d

(d) the individual position and personal circumstances of the applicant, including factors such as background, gender, age, health and disabilities so as to assess the seriousness of persecution or harm. Where the form of persecution is gender-specific or child-specific, account shall be taken of the fact that persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or other gender-specific means;

(d) the individual position and personal circumstances of the applicant, including factors such as background, gender, age, health and disabilities so as to assess the seriousness of persecution or harm. Where the form of persecution **or harm** is gender-specific or child-specific, account shall be taken of the fact that persecution **or harm**, within the meaning of the Geneva Convention, may be effected through sexual violence or other **means directed specifically against women or girls**;

Justification

Girls are also victims of violence specific to their gender, such as female circumcision, prostitution, etc. Unjustified harm may also be gender-specific and should therefore be included in this article.

Amendment 7
Article 7, point (e)

(e) whether there is credible evidence that laws or regulations are in force and applied in practice in the country of origin which authorise or condone the persecution of the applicant or the infliction upon the applicant of other serious and unjustified harm.

(e) whether there is credible evidence that ***traditions, practices***, laws or regulations are in force and applied in practice in the country of origin which authorise or condone the persecution of the applicant or the infliction upon the applicant of other serious and unjustified harm.

Justification

Traditions and practices may result in serious and unjustified harm, particularly in the case of gender-specific harmful traditions and practices.

Amendment 8
Article 11, paragraph 1, point (a)

(a) the infliction of serious and unjustified harm or discrimination on the grounds of race, religion, nationality, political opinion or membership of a particular social group, sufficiently serious by its nature or repetition as to constitute a significant risk to the applicant's life, freedom or security or to preclude the applicant from living in his or her country of origin;

(a) the infliction of serious and unjustified ***physical or psychological*** harm or discrimination on the grounds of race, religion, nationality, ***sex, sexual orientation, membership of an ethnic group***, political opinion or membership of a particular social group, sufficiently serious by its nature or repetition as to constitute a significant risk to the applicant's life, ***physical integrity***, freedom or security ***or to respect for the fundamental rights of the person concerned*** or to preclude the applicant from living in his or her country of origin;

Justification

It is important that account should be taken of these factors as grounds for a well-founded fear of persecution, and they should therefore be mentioned explicitly. Particularly in the case of women and girls, protection of physical integrity must be guaranteed.

Amendment 9

Article 11, paragraph 1, point (b)

(b) legal, administrative, police and/or judicial measures when they are designed or implemented in a discriminatory manner on the grounds of race, religion, nationality, political opinion or membership of a particular social group and if they constitute a significant risk to the applicant's life, freedom or security or preclude the applicant from living in his or her country of origin;

(b) legal, administrative, police and/or judicial measures when they are designed or implemented in a discriminatory manner on the grounds of race, religion, nationality, **sex, sexual orientation, membership of an ethnic group**, political opinion or membership of a particular social group and if they constitute a significant risk to the applicant's life, **physical integrity**, freedom or security **or to respect for the fundamental rights of the person concerned** or preclude the applicant from living in his or her country of origin;

Justification

It is important that account should be taken of these factors as grounds for a well-founded fear of persecution, and they should therefore be mentioned explicitly. Particularly in the case of women and girls, protection of physical integrity must be guaranteed.

Amendment 10

Article 11, paragraph 1, point (c)

(c) prosecution or punishment for a criminal offence if, on the grounds of race, religion, nationality, political opinion or membership of a particular social group:

(c) prosecution or punishment for a criminal offence if, on the grounds of race, religion, nationality, **sex, sexual orientation, membership of an ethnic group**, political opinion or membership of a particular social

opinion or membership of a particular social group:

Justification

It is important that account should be taken of these factors as grounds for a well-founded fear of persecution, and they should therefore be mentioned explicitly.

Amendment 11
Article 11, paragraph 1, point (c) (i)

(i) the applicant is either denied means of judicial redress or suffers a disproportionate or discriminatory punishment

(i) the applicant is either denied means of judicial redress or suffers a disproportionate or discriminatory punishment ***or corporal or capital punishment***

Justification

If there is a threat that corporal or capital punishment may be applied in respect of the offence in the event of an applicant's being returned, they must not be returned, for humanitarian reasons.

Amendment 12
Article 12, introductory part

In determining whether a well founded fear of persecution is based on reasons of race, religion, nationality, political opinion or membership of a particular social group, the following elements shall, as a minimum, be taken in account:

In determining whether a well founded fear of persecution ***or serious harm*** is based on reasons of race, religion, nationality, ***sex***, political opinion or membership of a particular social group, the following elements shall, as a minimum, be taken in account:

Justification

Unjustified harm may also be gender-specific and should therefore be included in this article. The term 'social group' as defined in Article 1 of the Geneva Convention is not sufficient to confer refugee status on women who are victims of persecution or oppression on account of their sex. It has been found that, on account of their gender and for reasons arising from their being female, women are abused, tortured, subjected to violence and persecution, have their freedom restricted, live under the shadow of alienating and oppressive religious and/or social norms, and risk their lives if they violate them. Such treatment should be regarded as a public issue and should no longer be seen as being in the private domain; it is a political matter.

Amendment 13

Article 12, point (c) a (new)

(ca) the category of sex shall include exclusion and violence inflicted on women on account of their gender, the application of social norms, customs of the State and/or of society which endanger the freedom and lives of women (forced marriage, genital mutilation, repudiation, rape, etc.);

Justification

The term 'social group' as defined in Article 1 of the Geneva Convention is not sufficient to confer refugee status on women who are victims of persecution or oppression on account of their sex. It has been found that, on account of their gender and for reasons arising from their being female, women are abused, tortured, subjected to violence and persecution, have their freedom restricted, live under the shadow of alienating and oppressive religious and/or social norms, and risk their lives if they violate them. Such treatment should be regarded as a public issue and should no longer be seen as being in the private domain; it is a political matter.

Amendment 14

Article 13, paragraph 2

2. The Member State which has granted refugee status shall bear the burden of proof

2. The Member State which has granted refugee status shall bear the burden of proof

in establishing that a person has ceased to be in need of international protection for one of the reasons stipulated in paragraph 1.

in establishing that a person has ceased to be in need of international protection for one of the reasons stipulated in paragraph 1 **and shall provide for appeal against the decision taken.**

Justification

Provision must be made for appeal against any decision.

Amendment 15

Article 14, paragraph 1, point (c) (ii)

(ii) the applicant has committed a serious non-political crime prior to his or her admission as a refugee;

(ii) the applicant has committed a serious non-political crime prior to his or her admission as a refugee, ***unless the penalties provided for will result in the application of capital or corporal punishment,***

Justification

If there is a threat that corporal or capital punishment may be applied in respect of the offence in the event of an applicant's being returned, they must not be returned, for humanitarian reasons.

Amendment 16

Article 15, point (a)

(a) torture or inhuman or degrading treatment or punishment; or

(a) torture or inhuman or degrading treatment or punishment, ***genital mutilation;***
or

Justification

Violation of physical integrity by means of genital mutilation should also be grounds for an application for asylum.

Amendment 17
Article 15, point (c)

(c) a threat to his or her life, safety or freedom as a result of indiscriminate violence arising in situations of armed conflict, or as a result of systematic or generalised violations of their human rights.

(c) a threat to his or her life, ***physical integrity***, safety or freedom as a result of indiscriminate violence arising in situations of armed conflict, or as a result of systematic or generalised violations of their human rights.

Justification

Physical integrity, particularly of a gender-specific nature, must be protected.

Amendment 18
Article 16, paragraph 2 a (new)

2a. Member States shall ensure that persons who are excluded on these grounds have the right to lodge an appeal against a decision to deny them subsidiary protection.

Justification

Provision must be made for appeal against any decision.

Amendment 19
Article 17, paragraph 1, point (b)

(b) the applicant has committed a serious non-political crime prior to his or her admission as a refugee;

(b) the applicant has committed a serious non-political crime prior to his or her admission as a refugee, ***unless there is provision for a sentence of corporal or capital punishment for the crime;***

Justification

If there is a threat that corporal or capital punishment may be applied in respect of the offence in the event of an applicant's being returned, they must not be returned, for humanitarian reasons.

Amendment 20
Article 18, paragraph 3

3. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of persons who have special needs such as: minors in general, unaccompanied minors, disabled people, elderly people, single parents with minor children, victims of torture or sexual abuse or exploitation, pregnant women and persons suffering from infirmity, whether mental or physical. Member States shall also take into account the specific situation of ***single*** women who are subject to substantial gender-related discrimination in their country of origin.

3. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of persons who have special needs such as: minors in general, unaccompanied minors, disabled people, elderly people, single parents with minor children, victims of torture or sexual abuse or exploitation, pregnant women and persons suffering from infirmity, whether mental or physical. Member States shall also take into account the specific situation of women who are subject to substantial gender-related discrimination in their country of origin.

Justification

There is no reason why single women should require more protection than women in general. In many countries, particularly in conflict situations, women are the first victims of persecution and discrimination.

Amendment 21

Article 20

Member States shall provide persons recognised as being in need of international protection, immediately after status has been granted, with information, in a language *likely to be* understood by them, in which provisions relating to the respective protection regimes are clearly set out.

Member States shall provide persons recognised as being in need of international protection, immediately after status has been granted, with information *in writing*, in a language understood by them, in which provisions relating to the respective protection regimes are clearly set out.

Justification

Member States must inform applicants for international protection in writing and in a language they understand. It is important that applicants fully understand the information provided by the Member States.

Amendment 22 Article 24, paragraph 2

2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training and practical workplace experience are offered to refugees, under the same conditions as nationals.

2. Member States shall ensure that activities such as employment-related education opportunities for adults, ***language-learning opportunities***, vocational training and practical workplace experience are offered to refugees, under the same conditions as nationals; ***vocational training and language-learning opportunities for women should, in particular, be promoted.***

Justification

It is vital that those receiving international protection integrate in their host country. This integration can be achieved through education, but above all by learning the language of the host country. Women applicants for international protection often have few social activities or contacts with nationals of the host country. In many cases, they do not have a proper knowledge of the language of the host country and do not follow any vocational training. It is therefore important to promote women's access to education, training and language learning since they are at the heart of the family structure.

Amendment 23 Article 24, paragraph 3

3. Member States shall authorise persons enjoying subsidiary protection status to engage in employed or self-employed activities under the same conditions as nationals no later than **six** months after such status is granted.

3. Member States shall authorise persons enjoying subsidiary protection status to engage in employed or self-employed activities under the same conditions as nationals no later than **three** months after such status is granted.

Justification

It will promote the integration of refugees in their new home country if they can begin to work as soon as possible.

Amendment 24 Article 24, paragraph 4

4. Member States shall ensure that persons enjoying subsidiary protection status have access to activities such as employment related education opportunities for adults, vocational training and practical workplace experience, under the same conditions as nationals no later than **one year** after such status is granted.

4. Member States shall ensure that persons enjoying subsidiary protection status have access to activities such as employment related education opportunities for adults, **language-learning opportunities**, vocational training and practical workplace experience, under the same conditions as nationals no later than **six months** after such status is granted; **vocational training and language-learning opportunities for women should, in particular, be promoted.**

Justification

Women applicants for international protection often have few social activities or contacts with nationals of the host country. In many cases, they do not have a proper knowledge of the language of the host country and do not follow any vocational training. It is therefore important to promote women's access to education, training and language learning since they are at the heart of the family structure. It is vital that those receiving international protection integrate in their host country. This integration can be achieved through education, but above all by learning the language of the host country. It will promote the integration of refugees in their new home country if they can begin to work as soon as possible.

Amendment 25 Article 25, paragraph 1

1. Member States shall grant full access to the education system to all those minors enjoying international protection under the same conditions as nationals.

1. Member States shall grant full access to the education system to all minors, ***whether or not they enjoy*** international protection ***and irrespective of their place of accommodation or placement***, under the same conditions as nationals.

Justification

The right to education is enshrined in Article 14 of the Charter of Fundamental Rights. It is important that all minors, whatever their status, have access to education. International protection application procedures may take a long time. It is therefore important that all minors attend school and prepare their future.

Amendment 26 Article 25, paragraph 2

2. Member States shall allow adults enjoying international protection access to the general education system, further training or retraining, under the same conditions as nationals.

2. Member States shall allow adults enjoying international protection access to the general education system, further training, ***in particular language learning***, or retraining, under the same conditions as nationals.

Justification

It is vital that those receiving international protection integrate in their host country. This integration can be achieved through education, but above all by learning the language of the host country.

Amendment 27 Article 27, paragraph 3

3. Member States shall ensure access to rehabilitation services to minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict. To facilitate recovery and reintegration, appropriate mental health care shall be developed and qualified psycho-social counselling shall be provided when it is needed.

3. Member States shall ensure access to rehabilitation services to minors **and women** who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict. To facilitate recovery and reintegration, appropriate mental health care shall be developed and qualified psycho-social counselling shall be provided when it is needed.

Justification

Women are the first victims of violence, exploitation and abuse. It is therefore important that they should have preferential access to specialist help and care in respect of the violence, exploitation and abuse to which they have been subjected.

Amendment 28 Article 28, paragraph 2

2. Member States shall ensure that the minors' needs are duly met in the implementation of the provisions of this Directive by the appointed guardian. The appropriate authorities shall make **regular** assessments.

2. Member States shall ensure that the minors' needs are duly met in the implementation of the provisions of this Directive by the appointed guardian. The appropriate authorities shall make assessments **at least once a year**.

Justification

The situation of unaccompanied minors must be given serious consideration. Proper consideration of the child's well-being requires an assessment to be carried out at least once a year. This will enable the necessary steps to be taken swiftly to protect the minor's well-being, should a difficulty arise.

Amendment 29
Article 28, paragraph 3

3. Member States shall ensure that unaccompanied minors are placed:

3. Member States shall ensure that unaccompanied minors are placed, ***in order of preference***:

Justification

Member States should take all the necessary steps to find a solution which is in the child's interest. It is therefore important that preference be given to placing a child with a member of his family. If this is not possible, it is essential that he be placed, in order of preference, with a foster family, in a specialised centre or, as a last resort, in other accommodation suitable for minors.

Amendment 30
Article 28, paragraph 3, point (c)

(c) in centres specialised in accommodation for minors; or

(c) in centres specialised in accommodation for minors ***which provide adequate protection***; or

Justification

These centres must care for and protect minors in such a way that they can integrate into society more easily afterwards and do not end up as prostitutes.

Amendment 31
Article 28, paragraph 7a (new)

7a. Member States shall ensure that all minors, irrespective of their place of

accommodation or placement and whatever their status, have access to the same education and training programmes as provided by the Member States for their nationals.

Justification

The right to education is enshrined in Article 14 of the Charter of Fundamental Rights. It is important that all minors, whatever their status and place of accommodation, be entitled to education and training, international protection applications may take a long time before a decision is taken on a person's status. It is essential that minors be enabled to continue their education and to prepare the future during this period.

Amendment 32
Article 34, paragraph 1

1. Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants and their accompanying family members, as well as the specific needs of minors, in particular unaccompanied minors.

1. Member States shall ensure that authorities, ***officials, interpreters*** and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants and their accompanying family members, as well as the specific needs of minors, in particular unaccompanied minors, ***disabled persons and traumatised persons***.

Justification

All officials and persons working with asylum seekers should be provided with training (psychological, communication, etc.) enabling them to respond to their needs.

27 May 2002

OPINION OF THE COMMITTEE ON PETITIONS

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

on the proposal for a Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees, or as persons who otherwise need international protection, and on the substance of those statuses
(COM(2001) 510 – C5-0573/2001 – 2001/0207(CNS))

Draftsman: Laura González Álvarez

PROCEDURE

The Committee on Petitions appointed Laura González Álvarez draftsman at its meeting of 21 November 2001.

The committee considered the draft opinion at its meeting of 22/23 May 2002.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Roy Perry, first vice-chairman and acting chairman; Proinsias De Rossa, second vice-chairman; Laura González Álvarez, draftsman; Richard A. Balfe, Felipe Camisón Asensio, Janelly Fourtou, Margot Kessler, Ioannis Koukiadis, Jean Lambert, Véronique Mathieu (for Jens Dyhr Okking), The Earl of Stockton and Eurig Wyn.

SHORT JUSTIFICATION

I. The right time for a long-awaited initiative

1. At a time when certain xenophobic or indeed racist political forces are attempting – sometimes in disgraceful ways – to foment irrational responses within the public at large in our Member States to 'sensitive' social issues such as immigration and problems such as unemployment and urban insecurity, your draftsman is convinced that a calmer assessment of the facts can only make us applaud what is a brave directive of great civil and legal value that will allow our Union to call itself a home of freedom, security, and human rights.
2. The directive is intended to provide a minimum degree of protection to persons genuinely

in need of it when they apply for refugee status under Article 1 of the Geneva Convention. The Geneva Convention, which was adopted to afford protection on a case-by-case basis to political refugees fleeing persecution at the hands of the State, today has to cope with larger-scale and more subtle forms of persecution that are not invariably meted out by States. Since 1951 additional reasons have prompted people to flee and seek refuge, namely the consequences of tribal wars and intercommunal or religious violence and the new assaults on fundamental rights stemming from repressive political, social, or religious constraints. It is also common knowledge that our Member States – and for that matter the applicant countries – have widely divergent asylum laws¹, which, moreover, they are thinking of toughening up, pressed by ill-informed public opinion. Common standards should therefore be adopted at Community level to guarantee clarity, legal certainty, justice, and coherence in a European area that is increasingly being opened up to free movement of persons. Minimum common standards of this kind are particularly necessary because a unanimous decision on asylum has still not been taken as provided for in Article 67(3) TEC and no uniform status has yet been laid down to apply throughout the Union.

II. Some welcome features of the directive

3. Your draftsman welcomes the fact that the directive marks a step in the direction advocated by the opinions previously delivered by the Committee on Petitions², especially as regards the time taken to process applications, places of accommodation, the right of movement, and the practice of a gainful occupation.

The point to bear in mind is the unfavourable comments and criticisms which human rights NGOs (such as Amnesty International and Human Rights Watch) and, above all, the United Nations High Commissioner for Refugees have made about the Member States' asylum policies.

4. Moreover, these striking differences in the treatment of refugees lead to knock-on effects whereby applicants move from one country to another. One case of this kind that made the news involved the asylum-seekers who had been crammed into the Sangatte Centre in France and attempted to make their way through the Channel Tunnel to the United Kingdom in the hope of enjoying better conditions than in France. Another example which might be mentioned is the note drawn up by the Foreign Ministry of a Member State³. This note amounted to nothing short of an indictment of the rights and guarantees accorded to asylum-seekers but was also a clear catalogue of failings in the laws in force, the administrative machinery, and reception facilities in the country concerned.
5. Although it is true that, since the mid-1990s, when some Member States started to close

¹ See the working papers compiled by Parliament's DG 4:

- Asylum in the EU Member States
- Asylum in the EU: the 'Safe country of origin' principle
- Migration and asylum in Central and Eastern Europe

See also *Le droit d'asile en Europe – Etude comparée*, by L. Jeannin, 1999 edition.

² Sbarbati opinion on 'a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum' (PE 302.263).

³ See *Le Monde*, 22 January 2002, p. 16.

their borders to economic migration (fortress Europe), many foreign nationals have tried to take advantage of the asylum procedure with the aim of settling in Europe, it is equally the case that the Member States have at the same time been taking a firmer line and made the Geneva Convention more difficult to apply.

6. The Community and the Member States are endeavouring to prevent illegal immigrants being smuggled in primarily because immigrants in this category are the first to suffer shameful exploitation and also because a massive influx of such immigrants damages the legitimate aspirations of true asylum-seekers and the interests of legal immigrants, to whom a proper legal status should be accorded and applied.
7. The Committee on Petitions notes that the Commission has proposed that a genuine European border guard corps should eventually be set up to protect the Union's external frontiers more securely, given that not all Member States are able to make the necessary arrangements on their own. However, Parliament is opposed to the introduction of national rules (as is already being proposed in some Member States) requiring asylum-seekers to be fingerprinted and made that opposition clear when it rejected the Protocol to the Convention establishing the 'Eurodac' system. Among the principles and rights codified in the 1951 Geneva Convention and the 1967 Protocol thereto, the most important safeguard ensures that asylum-seekers will not be refused entry or sent back by force to their countries of origin while their applications are awaiting approval.
8. This opinion will consequently not dwell at length on immigration, because that subject is dealt with in other legislative texts, on which, moreover, our committee has stated its position¹.
9. Your draftsman believes that the rapporteur – a fellow member of the Committee on Petitions whom she knows and whose views she regards highly – is best qualified to table any amendments to the directive.

Her decision not to table her own amendments to the legislative text is also due to the fact that she strongly supports the directive as a whole and its individual provisions and articles. Member States may, moreover, introduce more favourable provisions than those set out in the Community legislation. However, what our committee could propose to the Commission is that, before it is adopted, the proposal for a directive should be the subject of public consultation involving the Office of the United Nations High Commissioner for Refugees, its delegations in the Member States, and the main non-governmental organisations which provide legal assistance to asylum-seekers in the Member States.

10. Your draftsman will therefore merely draw attention to some points which she considers to be of greatest merit and which have also been raised in a number of petitions to

¹ Saïfi opinion '*on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities*' (PE 313.949)
Kessler opinion '*on the proposal for a European Parliament and Council directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*' (PE 313.928)
González Álvarez opinion '*on the proposal for a Council directive concerning the status of third-country nationals who are long-term residents*' (PE 313.354).-

Parliament. The directive:

- (a) Is consistent with international law on human rights and the rights of refugees, and with the Union Charter of Fundamental Rights, and seeks to uphold respect for human dignity.
- (b) Contains a common definition of ‘membership of a particular social group’, which is recognised to give rise to persecution and covers certain essential characteristics such as gender, membership of a trade union, or the fact of belonging to a group of people who share a common history or some other common attribute.
- (c) Does not equate nationality solely with citizenship, but widens the concept to encompass the fact of belonging to a group united by virtue of its cultural, ethnic, or linguistic identity or common geographical or political origins.
- (d) Takes account of forms of persecution specifically concerning children (such as their enrolment in armies, forced labour, and prostitution), bearing in mind that the ‘best interests’ of the children involved have to be a key consideration for Member States when they implement the directive.
- (e) Allows for the specific needs of special categories of persons such as unaccompanied minors, the disabled, the elderly, lone parents accompanied by underage children, persons who have been tortured, exploited, or sexually abused, pregnant women, and the physically or mentally ill.
- (f) Defines ‘family members’ in such a way as to include an asylum-seeker’s spouse or unmarried partner if, in the latter case, the relationship with the asylum-seeker is stable and non-marital relationships are recognised by the law of the host Member State.
- (g) Accords certain entitlements to refugees such as access to employment and the same economic treatment as host-country nationals, access to education and vocational training, recognition of qualifications, the necessary assistance as regards social welfare and means of subsistence, access to appropriate accommodation, and the freedom to move within the host Member State without discrimination.

CONCLUSIONS

In short, your draftsman requests the committee, as regards the directive as a whole, to take account of the conclusions summarised below:

The Committee on Petitions,

1. Endorses the directive submitted, which seeks to accord a high degree of protection in all Member States to asylum-seekers and refugees.
2. Considers that Member States should grant political refugee status to persons who fully satisfy the conditions required by the Geneva Convention, without restricting the scope of the Convention at national level purely because illegal economic migrants may claim to be

victims of political persecution.

3. Considers it right that the directive should refer to the fundamental rights set out in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union and, in particular, assign priority to the situation of children and women and weak and vulnerable persons.
4. Applauds the provisions seeking to eliminate inequalities and promote equal treatment of men and women.
5. Draws attention to the open-minded, progressive provisions relating to persons to be treated as 'family members'.
6. Particularly approves of the fact that asylum-seekers will be entitled to take up paid employment, treated on an equal footing with host-country nationals as regards social security, vocational training, and the recognition of qualifications, and allowed to move freely within host Member States.
7. Welcomes the fact that the directive refers to United Nations aims and principles in connection with persons who, because they have violated those principles, are excluded from subsidiary protection status.