

# EUROPEAN PARLIAMENT

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**\*\*\*I**

## **REPORT**

on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

(COM(2008)0820 – C6-0474/2008 – 2008/0243(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jeanine Hennis-Plasschaert

(Recast – Rule 80a of the Rules of Procedure)

### ***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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (COM(2008)0820 – C6-0474/2008 – 2008/0243(COD))**

**(Codecision procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0820),
  - having regard to Article 251(2) and Article 63(1), point 1a, of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0474/2008),
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>1</sup>,
  - having regard to the letter of 3 April 2009 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 80a(3) of its Rules of Procedure,
  - having regard to Rules 80 and 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2009),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission (and incorporating the technical amendments approved by the Committee on Legal Affairs) and as amended below;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and the Commission.

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<sup>1</sup> OJ C 77, 28.3.2002, p. 1.

## Amendment 1

### Proposal for a regulation Recital 5 a (new)

*Text proposed by the Commission*

*Amendment*

***(5a) As regards the introduction in successive phases of a Common European Asylum System that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (the Dublin Convention), whose implementation has stimulated the process of harmonising asylum policies.***

#### *Justification*

*This amendment is necessary because otherwise the text would represent a departure from one of the most fundamental pillars of the Dublin system, namely the principle of 'one chance only' (one examination only of an application for asylum in the EU).*

## Amendment 2

### Proposal for a regulation Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) The services of the Member States responsible for asylum should receive practical aid to meet their day-to-day operational requirements. Here the future European Asylum Support Office will play a vital role.***

#### *Justification*

*There is a need to strengthen administrative cooperation between Member States, so as to*

*bring different national practices into line. The Office will support Member States in applying a more consistent and fairer asylum policy, for instance by defining good practice, organising training courses or coordinating support teams of national experts to which Member States can have recourse when there is a large influx of asylum-seekers in their territory.*

### **Amendment 3**

#### **Proposal for a regulation**

##### **Recital 15**

*Text proposed by the Commission*

(15) A personal interview should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection and, **where necessary**, to orally inform applicants about the application of this Regulation.

*Amendment*

(15) A personal interview should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection and to orally inform applicants about the application of this Regulation.

*Justification*

*The applicants should be informed orally about the application of this Regulation at all times.*

### **Amendment 4**

#### **Proposal for a regulation**

##### **Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) For the purposes of this Regulation “detention” should not carry a penal or punitive connotation, but should mean an exclusively administrative and temporary measure equivalent to a holding operation.***

*Justification*

*As has been said repeatedly, there is a need to distinguish an administrative holding procedure, to which asylum-seekers might be subject because of a risk of absconding, from detention proper, because a person seeking international protection should never be treated like a criminal.*

### **Amendment 5**

## Proposal for a regulation

### Recital 18

*Text proposed by the Commission*

(18) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he is seeking international protection. In particular, detention of asylum seekers must be applied in line with Article 31 of the Geneva Convention and under the clearly defined exceptional circumstances and guarantees prescribed in Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers]. Moreover, the use of detention for the purpose of transfer to the Member State responsible should be limited and subject to the principle of proportionality with regard to the means taken and objective pursued.

*Amendment*

(18) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he is seeking international protection. In particular, detention of asylum seekers must be applied in line with Article 31 of the Geneva Convention ***in administrative holding centres distinct from prison facilities*** and under the clearly defined exceptional circumstances and guarantees prescribed in Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers]. Moreover, the use of detention for the purpose of transfer to the Member State responsible should be limited and subject to the principle of proportionality with regard to the means taken and objective pursued.

*Justification*

*See justification for Amendment 31.*

## Amendment 6

### Proposal for a regulation

#### Recital 22

*Text proposed by the Commission*

(22) This mechanism of suspension of transfers should be applied also when the Commission considers that the level of protection for applicants for international protection in a given Member State is not in conformity with Community legislation on asylum, in particular in terms of reception conditions and access to the asylum procedure, *in view of* ensuring that all applicants for international protection benefit from an adequate level of protection in all Member States.

*Amendment*

(22) This mechanism of suspension of transfers should be applied also when the Commission considers that the level of protection for applicants for international protection in a given Member State is not in conformity with Community legislation on asylum, in particular in terms of reception conditions, ***qualification for international protection*** and access to the asylum procedure, *with a view to* ensuring that all applicants for international protection benefit from an adequate level



of protection in all Member States.

## Amendment 7

### Proposal for a regulation Recital 22 a (new)

*Text proposed by the Commission*

*Amendment*

***(22a) This mechanism for the suspension of transfers is an exceptional measure to address issues of particular pressure or ongoing protection concerns.***

## Amendment 8

### Proposal for a regulation Recital 22 b (new)

*Text proposed by the Commission*

*Amendment*

***(22b) The Commission should periodically review progress toward improving the long-term development and harmonisation of the Common European Asylum System, and the degree to which solidarity measures and the availability of a suspension mechanism are facilitating that progress, and report on that progress.***

***In view of the fact that the Dublin system was not intended to be a mechanism for equitably sharing responsibilities with regard to the examination of applications for international protection, and that a number of Member States are particularly exposed to migratory flows, in particular by virtue of their geographical location, it is essential to reflect on and propose legally binding instruments to ensure greater solidarity between Member States and higher standards of protection. Such instruments should especially facilitate the secondment of officials from other Member States who assist those Member States which are faced with specific pressures and where applicants cannot***

*benefit from adequate standards of protection and, where the reception capacities of one Member State are insufficient, facilitate the resettlement of beneficiaries of international protection in other Member States, providing that those concerned consent and that their fundamental rights are respected.*

## Amendment 9

### Proposal for a regulation Article 2 – point h

#### *Text proposed by the Commission*

(h) "unaccompanied minor" means a minor who arrives in the territory of the Member States unaccompanied by an adult responsible for **them** whether by law or by custom, and for as long as **they are** not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of Member States;

#### *Amendment*

(h) "unaccompanied minor" means a minor who arrives in the territory of the Member States unaccompanied by an adult responsible for **him/her** whether by law or by custom, and for as long as **he/she is** not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of Member States;

#### *Justification*

*Amendment in view of a harmonised wording throughout the text.*

## Amendment 10

### Proposal for a regulation Article 2 – point i – subpoint iii

#### *Text proposed by the Commission*

(iii) the married minor children of couples referred to in point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, where it is in their best interests to reside with the applicant;

#### *Amendment*

(iii) the married minor children of couples referred to in point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law **and provided they are not accompanied by their spouses**, where it is in their best interests to reside with the applicant;

## Amendment 11

### Proposal for a regulation

#### Article 2 – point i – subpoint iv

*Text proposed by the Commission*

(iv) the father, mother or guardian of the applicant when the latter is a minor and unmarried, or when he is a minor and married but it is in his/her best interests to reside with his/her father, mother or guardian ;

*Amendment*

(iv) the father, mother or guardian, when the latter is a minor and unmarried, or when he/she is a minor and married **and not accompanied by his/her spouse** but it is in his/her best interests to reside with his/her father, mother or guardian;

## Amendment 12

### Proposal for a regulation

#### Article 2 – point i – subpoint v

*Text proposed by the Commission*

(v) the minor unmarried siblings of the applicant, when the latter is a minor and unmarried, or when the applicant or his/her siblings are minors and married but it is in the best interests of one or more of them that they reside together;

*Amendment*

(v) the minor unmarried siblings of the applicant, when the latter is a minor and unmarried, or when the applicant or his/her siblings are minors and married **and not accompanied by his/her spouse** but it is in the best interests of one or more of them that they reside together;

## Amendment 13

### Proposal for a regulation

#### Article 4 – paragraph 1 – point g

*Text proposed by the Commission*

(g) **the existence of** the right of access to data relating to him/her, and the right to request that inaccurate data relating to him/her be corrected or that unlawfully processed data relating to him/her be deleted, **including the right to receive**

*Amendment*

(g) the right of access to data relating to him/her, and the right to request that inaccurate data relating to him/her be corrected or that unlawfully processed data relating to him/her be deleted, **as well as** the procedures for exercising those rights,

**information on** the procedures for exercising those rights **and** the contact details of the National Data Protection Authorities which shall hear claims concerning the protection of personal data.

**including** the contact details **of the authorities referred to in Article 33 and** of the National Data Protection Authorities which shall hear claims concerning the protection of personal data.

*Justification*

*It should be clarified that the applicant should be informed about the content and not only the existence of the right of access to data relating to him/her and the rights to correction or erasure of data as well as, separately, on the procedural steps he/she may take. Furthermore the addition of the contact details of the national competent authorities in charge of the Dublin cooperation takes account of the fact that the data controller is primarily responsible to hear claims concerning the protection of personal data.*

**Amendment 14**

**Proposal for a regulation**

**Article 4 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

**Where necessary for** the proper understanding of the applicant, the information shall also be supplied orally, at the interview organised pursuant to Article 5.

*Amendment*

**For** the proper understanding of the applicant, the information shall also be supplied orally, at the interview organised pursuant to Article 5.

*Justification*

*See justification Amendment 1.*

**Amendment 15**

**Proposal for a regulation**

**Article 5 – paragraph 1**

*Text proposed by the Commission*

1. The Member State carrying out the process of determining the Member State responsible under this Regulation, shall **give** applicants **the opportunity of** a personal interview with a qualified person under national law to conduct such an interview.

*Amendment*

1. The Member State carrying out the process of determining the Member State responsible under this Regulation, shall **call the** applicants **for** a personal interview with a qualified person under national law to conduct such an interview.

*Justification*

*It is important to make clearer the mandatory character of the interview.*

**Amendment 16**

**Proposal for a regulation**

**Article 5 – paragraph 2**

*Text proposed by the Commission*

2. The personal interview shall **be for** the purpose of facilitating the process of determining the Member State responsible, in particular **for** allowing the applicant to submit relevant information necessary for the correct identification of the responsible Member State, **and for** the purpose of informing the applicant orally about the application of this Regulation.

*Amendment*

2. The personal interview shall **have** the purpose of facilitating the process of determining the Member State responsible, in particular allowing the applicant to submit relevant information necessary for the correct identification of the responsible Member State, **as well as** the purpose of informing the applicant orally about the application of this Regulation.

*Justification*

*Clearer wording of the text.*

**Amendment 17**

**Proposal for a regulation**

**Article 6 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall ensure that a representative represents and/or assists the unaccompanied minor with respect to all procedures provided for in this Regulation. This representative may also be the representative referred to in Article 23 of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers].

*Amendment*

2. Member States shall ensure that a representative **within the meaning of Article 2(i) of Directive 2005/85/EC** represents and/or assists the unaccompanied minor with respect to all procedures provided for in this Regulation. This representative may also be the representative referred to in Article 23 of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers].

*Justification*

*This amendment specifies what is meant by 'representative' by referring to the definition*

contained in Article 2(i) of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

## Amendment 18

### Proposal for a regulation Article 6 – paragraph 4

*Text proposed by the Commission*

4. Member States shall establish procedures ***in national legislation*** for tracing the family members or other relatives present in the Member States of unaccompanied minors. They shall start to trace the members of the unaccompanied minor's family or other relatives as soon as possible, after the lodging of the application for international protection whilst protecting his/her best interests.

*Amendment*

4. Member States shall establish procedures for tracing the family members or other relatives present in the Member States of unaccompanied minors, ***where necessary with the assistance of international or other relevant organisations***. They shall start to trace the members of the unaccompanied minor's family or other relatives as soon as possible, after the lodging of the application for international protection whilst protecting his/her best interests.

## Amendment 19

### Proposal for a regulation Article 6 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Within the framework of the application of this Regulation and under the conditions laid down in Article 17 of Directive 2005/85/EC, Member States may use medical examinations to determine the age of unaccompanied minors.***

***In cases where medical examinations are used, Member States shall ensure that they are conducted in a reasonable and thorough manner, as required by scientific and ethical standards.***

### *Justification*

*Debate on 'ins & outs' of medical examinations is ongoing and should be addressed under the upcoming revision of Directive 2005/85/EC. If Member States use such examinations they should in any case ensure that these examinations are conducted in line with scientific and*

*ethical standards.*

## **Amendment 20**

### **Proposal for a regulation**

#### **Article 7 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. By way of derogation from paragraph 2, in order to ensure respect for the principle of family unity and of the best interests of the child, the Member State responsible in accordance with the criteria laid down in Articles 8 to 12 shall be determined on the basis of the situation obtaining when the asylum seeker lodged his/her most recent application for international protection. This paragraph shall apply on condition that the previous applications of the asylum seeker have not yet been subject of a first decision regarding the substance.**

*deleted*

*Justification*

*This would make the determination of responsibility too complicated and encourage abuse.*

## **Amendment 21**

### **Proposal for a regulation**

#### **Article 8 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Where the applicant is an unaccompanied minor who has **a** relative legally present in another Member State who can take care of him or her, that Member State shall be responsible for examining the application, provided that this is in the best interests of the minor.

2. Where the applicant is an unaccompanied minor who has **no family members within the meaning of Article 2(i)** legally present in another Member State **but who has another** relative legally present in another Member State who can take care of him or her, that Member State shall be responsible for examining the application, provided that this is in the best

interests of the minor.

*Justification*

*It is necessary to clarify the meaning of this paragraph compared to the previous paragraph.*

**Amendment 22**

**Proposal for a regulation**

**Article 8 – paragraph 4**

*Text proposed by the Commission*

4. In the absence of a family member or of another relative, the Member State responsible for examining the application shall be that where the minor has lodged his or her ***most recent*** application for international protection, ***provided that this is in the best interests of the minor.***

*Amendment*

4. In the absence of a family member or of another relative, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for international protection.

**Amendment 23**

**Proposal for a regulation**

**Article 23 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

2. In case of a subsequent application for international protection, the request to take back the person concerned shall be made as quickly as possible and in any case within ***two months*** of receiving the EURODAC hit, pursuant to Article 6(5) of Regulation (EC) No [.../...] [concerning the establishment of “EURODAC” for the comparison of fingerprints for the effective application of the Dublin Regulation].

*Amendment*

2. In case of a subsequent application for international protection, the request to take back the person concerned shall be made as quickly as possible and in any case within ***one month*** of receiving the EURODAC hit, pursuant to Article 6(5) of Regulation (EC) No [.../...] [concerning the establishment of “EURODAC” for the comparison of fingerprints for the effective application of the Dublin Regulation].

*Justification*

*Once there is a hit in the EURODAC system there is no need for a long delay in filling the request to take back the person concerned.*

**Amendment 24**



**Proposal for a regulation**  
**Article 23 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. Where there is no subsequent application for international protection, and in case the requesting Member State decides to search the EURODAC system in accordance with Article 13 of Regulation (EC) No [.../...] [concerning the establishment of “EURODAC” for the comparison of fingerprints for the effective application of the Dublin Regulation], the request to take back the person concerned shall be made as quickly as possible and in any case within **two months** of receiving the EURODAC hit, pursuant to Article 13(4) of that Regulation.

*Amendment*

3. Where there is no subsequent application for international protection, and in case the requesting Member State decides to search the EURODAC system in accordance with Article 13 of Regulation (EC) No [.../...] [concerning the establishment of “EURODAC” for the comparison of fingerprints for the effective application of the Dublin Regulation], the request to take back the person concerned shall be made as quickly as possible and in any case within **one month** of receiving the EURODAC hit, pursuant to Article 13(4) of that Regulation.

*Justification*

*Once there is a hit in the EURODAC system there is no need for a long delay in filling the request to take back the person concerned.*

**Amendment 25**

**Proposal for a regulation**  
**Article 25 – paragraph 1**

*Text proposed by the Commission*

1. Where the requested Member State agrees to take charge or to take back an applicant or another person as referred to in Article 18(1)(d), the requesting Member State shall notify the person concerned of the decision to transfer him/her to the responsible Member State and, where applicable, of not examining his/her application for international protection. Such notification shall be made in writing, in a language which the **person** is reasonably supposed to understand and within no more than *fifteen* working days from the date of receipt of the reply from the requested Member State.

*Amendment*

1. Where the requested Member State agrees to take charge or to take back an applicant or another person as referred to in Article 18(1)(d), the requesting Member State shall notify the person concerned of the decision to transfer him/her to the responsible Member State and, where applicable, of not examining his/her application for international protection. Such notification shall be made in writing, in a language which the **applicant** is reasonably supposed to understand and within no more than *15* working days from the date of receipt of the reply from the requested Member State.

*Justification*

*See justification for Amendment 49.*

**Amendment 26**

**Proposal for a regulation**

**Article 26 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***That period of time shall be not less than 10 working days as from the date of notification referred to in Article 25(1).***

**Amendment 27**

**Proposal for a regulation**

**Article 26 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. In the event of an appeal or review concerning the transfer decision referred to in Article 25, the authority referred to in paragraph 1 of this Article shall, acting ex-officio, decide, as soon as possible, and in any case no later than **seven** working days from the lodging of an appeal or of a review, whether or not the person concerned may remain on the territory of the Member State concerned pending the outcome of his/her appeal or review.

3. In the event of an appeal or review concerning the transfer decision referred to in Article 25, the authority referred to in paragraph 1 of this Article shall, acting ***either at the request of the person concerned or, in the absence of such a request,*** ex-officio, decide, as soon as possible, and in any case no later than **five** working days from the lodging of an appeal or of a review, whether or not the person concerned may remain on the territory of the Member State concerned pending the outcome of his/her appeal or review.

**Amendment 28**

**Proposal for a regulation**  
**Article 26 – paragraph 6**

*Text proposed by the Commission*

6. Member States shall ensure that legal assistance and/or representation **be** granted free of charge **where the person concerned cannot afford the costs involved.**

*Amendment*

6. Member States shall ensure that **the necessary** legal assistance and/or representation **is** granted **on request** free of charge **in accordance with Article 15(3) to (6) of Directive 2005/85/EC.**

**Amendment 29**

**Proposal for a regulation**  
**Article 27 – paragraph 2**

*Text proposed by the Commission*

2. Without prejudice to Article 8(2) of Directive [...]/.../EC] [laying down minimum standards for the reception of asylum seekers], when it proves necessary, on the basis of an individual assessment of each case, **and if other less coercive measures cannot be applied effectively,** Member States may detain an asylum-seeker or another person as referred to in Article 18(1)(d), who is subject of a decision of transfer to the responsible Member State, **to a particular place** only if there is a **significant** risk of him/her absconding.

*Amendment*

2. Without prejudice to Article 8(2) of Directive [...]/.../EC] [laying down minimum standards for the reception of asylum seekers], when it proves necessary, on the basis of an individual assessment of each case Member States may detain an asylum-seeker or another person as referred to in Article 18(1)(d), who is subject *to* a decision of transfer to the responsible Member State, **in a non-detention facility only if other less coercive measures have not been effective and,** only if there is a risk of him/her absconding.

*Justification*

*There might be an ambiguity as to defining a 'significant' 'risk of absconding'; the risk of absconding as such is defined in Article 2 point (l).*

**Amendment 30**

**Proposal for a regulation**  
**Article 27 – paragraph 7 – subparagraph 1**

*Text proposed by the Commission*

7. Detention pursuant to paragraph 2 shall be ordered in writing with reasons in fact

*Amendment*

7. Detention pursuant to paragraph 2 shall be ordered in writing with reasons in fact

and in law, in particular specifying the reasons on the basis of which it is considered that there is a *significant* risk of the person concerned absconding as well as the time period of its duration.

and in law, in particular specifying the reasons on the basis of which it is considered that there is a risk of the person concerned absconding as well as the time period of its duration.

*Justification*

*See justification Amendment 16.*

**Amendment 31**

**Proposal for a regulation  
Article 27 – paragraph 8**

*Text proposed by the Commission*

8. In every case of a detained person pursuant to paragraph 2, the *continued* detention shall be reviewed by a judicial authority at reasonable intervals of time either on request by the person concerned or ex-officio. Detention shall never be unduly prolonged.

*Amendment*

8. In every case of a detained person pursuant to paragraph 2, the detention shall be reviewed by a judicial authority at reasonable intervals of time either on request by the person concerned or ex-officio. Detention shall never be unduly prolonged.

*Justification*

*The term 'continued' coupled with the term 'detention' risks to create confusion as to the type of detention in question.*

**Amendment 32**

**Proposal for a regulation  
Article 27 – paragraph 10**

*Text proposed by the Commission*

10. Minors shall not be detained unless it is in their best interests, as prescribed in *Article 7* of this Regulation and in accordance with an individual examination of their situation in accordance with Article 11(5) of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers].

*Amendment*

10. Minors shall not be detained unless it is in their best interests, as prescribed in *Article 6(3)* of this Regulation and in accordance with an individual examination of their situation in accordance with Article 11(5) of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers].

*Justification*

*The best interests of the child are prescribed in Article 6 paragraph 3 not in Article 7.*

**Amendment 33**

**Proposal for a regulation  
Article 30 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 30a**

***Mode of carrying out transfers***

- 1. The Member State carrying out the transfer shall promote voluntary transfers by providing adequate information to the applicant.***
- 2. If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.***

*Justification*

*The provisions included in recital 19 [ "In accordance with Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003, transfers to the Member State responsible may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers and should ensure that supervised or escorted transfers are undertaken in a human manner, in full respect for fundamental rights and human dignity" ] should be echoed in the binding part of the text.*

**Amendment 34**

**Proposal for a regulation  
Article 31 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. When the Commission considers that the circumstances prevailing in a Member State may lead to a level of protection for

2. When the Commission considers that the circumstances prevailing in a Member State may lead to a level of protection for

applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers **and with** Directive 2005/85/EC, it may decide in conformity with the procedure laid down in paragraph 4, that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers, Directive 2005/85/EC **and Directive 2004/83/EC**, it may decide in conformity with the procedure laid down in paragraph 4, that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

### *Justification*

*The Qualification Directive 2004/83/EC (on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted) is the core instrument of the EU asylum acquis and, therefore, an explicit reference should be included.*

## **Amendment 35**

### **Proposal for a regulation Article 31 – paragraph 3**

#### *Text proposed by the Commission*

3. When a Member State is concerned that the circumstances prevailing in another Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers **and with** Directive 2005/85/EC, it may request that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include detailed information on the situation in the concerned Member State pointing to a possible lack of conformity with Community legislation, in particular Directive [.../.../EC] laying down

#### *Amendment*

3. When a Member State is concerned that the circumstances prevailing in another Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers, Directive 2005/85/EC **and Directive 2004/83/EC**, it may request that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include detailed information on the situation in the concerned Member State pointing to a possible lack of conformity with Community legislation, in particular Directive [.../.../EC] laying down

minimum standards for the reception of asylum seekers *and* Directive 2005/85/EC.

minimum standards for the reception of asylum seekers, Directive 2005/85/EC *and Directive 2004/83/EC*.

*Justification*

*See justification Amendment 20.*

**Amendment 36**

**Proposal for a regulation**

**Article 31 – paragraph 4 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) indicia of measures, benchmarks and timetables to be established in order to assess progress toward resolution of the circumstances identified pursuant to point (a) of this paragraph.*

**Amendment 37**

**Proposal for a regulation**

**Article 31 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

*7a. A Member State as referred to in paragraphs 1 to 3 shall take effective and timely steps to remedy the situation that led to the temporary suspension of transfers.*

**Amendment 38**

**Proposal for a regulation**

**Article 31 – paragraph 8**

*Text proposed by the Commission*

*Amendment*

8. Transfers may be suspended for a period which cannot exceed six months. Where the grounds for the measures still persist after six months, the Commission may decide, upon a request from the Member

8. Transfers may be suspended for a period which cannot exceed six months. Where the grounds for the measures still persist after six months, the Commission may decide, upon a request from the Member

State concerned referred to paragraph 1 or upon its own initiative, to extend their application for a further six months period. *Paragraph 5 applies.*

State concerned referred to *in* paragraph 1 or upon its own initiative, to extend their application for a further six months period. *The provisions of paragraph 5 shall also be applicable.*

*Justification*

*Linguistic amendment.*

**Amendment 39**

**Proposal for a regulation**  
**Article 31 – paragraph 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***9a. On a proposal by the Commission to the European Parliament and the Council, and acting in accordance with the procedure referred to in Article 251 of the Treaty, instruments shall be enacted, binding on all Member States, in order to provide effective support to those Member States which are faced with specific and disproportionate pressures on their national systems due, in particular, to their geographical or demographic situation. Those instruments shall enter into force no later than 31 December 2011 and in any event make provision for the following:***

***(a) the secondment of officials from other Member States, under the aegis of the European Asylum Support Office [.../.../EC], who assist those Member States which are faced with specific pressures and where the applicants cannot benefit from adequate standards of protection;***

***(b) a scheme to reallocate beneficiaries of international protection from Member States which are faced with specific and disproportionate pressures to others, in consultation with the Office of the United Nations High Commissioner for Refugees, while ensuring that the***



***reallocation follows non-discretionary,  
transparent and unequivocal rules.***

*Justification*

*The Dublin system in itself, as spelled out in Impact assessment SEC(2008)2962, is not a cause of particular asylum pressure or overburden on Member States. The provisions on the 'temporary suspension of transfers' will therefore turn out to be a political statement rather than an effective instrument to support a Member State that faces a particularly urgent situation which places an exceptionally heavy burden on its reception capacities, asylum system or infrastructure (and very often leading to cases where applicants cannot benefit from adequate standards of protection, in particular in terms of reception conditions and access to the asylum procedure). The past years have shown that the existing forms of practical cooperation among Member States in order to align their interpretation of the principle of 'solidarity and fair sharing of responsibility' are not in any way sufficient to address the problems that a number of Member States are facing. It is essential to look at the heavy burden posed on the resources of a number of Member States from a wider perspective of general migratory pressures. Binding responsibility sharing instruments seem to be the only way forward. At the same time the Commission should make full use of its possibilities to start up infringements procedures in cases where non-compliance with community law persists.*

**Amendment 40**

**Proposal for a regulation**

**Article 31 – paragraph 9 b (new)**

*Text proposed by the Commission*

*Amendment*

***9b. This Article shall cease to apply as soon as the instruments referred to in paragraph 9a have entered into force, and in any event on 31 December 2011 at the latest.***

*Justification*

*See justification Amendment 23.*

## Amendment 41

### Proposal for a regulation

#### Article 31 – paragraph 9 c (new)

*Text proposed by the Commission*

*Amendment*

***9c. As part of the monitoring and evaluation referred to in Article 41, the Commission shall review the application of this Article and report to the European Parliament and the Council no later than 30 June 2011. In its report, the Commission shall assess whether there is a justified need to extend the application of this Article beyond 31 December 2011. If the Commission considers it appropriate, it shall submit a proposal for such an extension to the European Parliament and the Council in accordance with the procedure laid down in Article 251 of the Treaty.***

*Justification*

*See justification Amendment 23.*

## Amendment 42

### Proposal for a regulation

#### Article 32 – paragraph 9 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC, in particular because it is incomplete or inaccurate, he is entitled to have it corrected or erased.

If he/**she** finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC, in particular because it is incomplete or inaccurate, he/**she** is entitled to have it corrected or erased.

*Justification*

*Amendment in view of a harmonised wording throughout the text.*

## Amendment 43

### Proposal for a regulation

#### Article 35 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 40. By agreeing to use the conciliation procedure, the Member States concerned ***undertake to take*** the utmost account of the solution proposed.

*Amendment*

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 40. By agreeing to use the conciliation procedure, the Member States concerned ***commit themselves to taking*** the utmost account of the solution proposed.

*Justification*

*Linguistic amendment.*

## Amendment 44

### Proposal for a regulation

#### Article 41 – subparagraph 1

*Text proposed by the Commission*

At the latest three years after the date mentioned in the first paragraph of Article 44, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

*Amendment*

At the latest three years after the date mentioned in the first paragraph of Article 44, ***and without prejudice to Article 31 (9c)***, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

*Justification*

*In line with the proposals on Article 31.*



## EXPLANATORY STATEMENT

### 1. Background

The Commission's report<sup>1</sup> on the evaluation of the Dublin system (the so-called technical evaluation) concluded that *'overall, the objectives of the system, notably to establish a clear and workable mechanism for determining responsibility for asylum applications, have, to a large extent, been achieved'*. Some concerns nevertheless remained, both on the practical application and the effectiveness of the system. Moreover, the responses to the Green Paper<sup>2</sup> on the future of the Common European Asylum System -CEAS- (the so-called policy evaluation) also identified an important number of shortcomings related mainly to the efficiency of the system as well as in the level of protection afforded to applicants for international protection which are subject to the Dublin system.

Therefore, and with the aim to address the above-mentioned deficiencies, the Commission decided to put forward the proposal for a recast of Council Regulation (EC) No 343/2003/EC of 18 February 2003 *on the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national* (hereafter: the Dublin Regulation).

The proposal retains the same underlying principles as in the existing Dublin Regulation, namely that responsibility for examining an application for international protection lies primarily with the Member State which played the greatest part in the applicant's entry into or residence on the territories of the Member States, subject to exceptions designed to protect family unity and specific humanitarian clauses.

It should be mentioned that the European Parliament has expressed its opinion on several occasions and put forward a series of recommendations in its September 2008 resolution on the evaluation of the Dublin system<sup>3</sup>. Most of these recommendations have been taken into account by the Commission.

The fact that the current Dublin Regulation, as part of the first stage of the CEAS, was the result of a sensitive political compromise, adopted by unanimous vote in the Council, meant that the final text contained many ambiguities and legislative gaps. Your rapporteur therefore agrees with the Commission's statement that *'there is still much scope for improving the existing instrument'*.

### 2. Objectives and content of the proposal

The Commission wishes to amend the current Dublin system by:

1. Extending the scope of the application of the Regulation in order to include applicants for (and beneficiaries of) subsidiary protection;

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<sup>1</sup> COM(2007)0299, p. 13.

<sup>2</sup> COM(2007)0301.

<sup>3</sup> P6\_TA-PROV(2008)0385.

2. Enhancing the efficiency of the current system;
3. Ensuring that the needs of applicants for international protection are comprehensively addressed and that adequate legal safeguards are foreseen under the Dublin procedure;
4. Addressing situations of particular pressure on Member States' reception capacity facilities and asylum systems as well as situations where there is an inadequate level of protection for applicants for international protection.

### **2.1. *Extending the scope of the application of the Regulation in order to include applicants for (and beneficiaries of) subsidiary protection***

The current Dublin system does not apply to applicants for (and beneficiaries of) subsidiary protection, as at the time of its adoption, the concept of subsidiary protection was not yet part of the asylum acquis. However, this concept was incorporated with the adoption of the Qualification Directive 2004/83/EC. Although the current status quo would not immediately lead to enormous difficulties in practice, as highlighted in the impact assessment<sup>1</sup>, we could end up with a situation in which an asylum-seeker cannot be reunited with a family member who is beneficiary of subsidiary protection in another Member State. The extension of the scope is thus a necessary modification in order to ensure consistency with current EU acquis and in order to prevent that, in practice, family members are separated. More generally this proposal aims to align the terminology and definitions used in the Regulation with those contained in the other asylum instruments. With a view to more consistency and better law making your rapporteur fully supports the modifications as proposed by the Commission.

### **2.2. *Enhancing the efficiency of the current system***

Several modifications are proposed to enhance the uniformity and efficiency of the Dublin system in order to ensure better compliance by the Member States. Your rapporteur is in favour of these amendments.

- Introduction of deadlines to ensure that the responsibility determination procedure will become more efficient and rapid (e.g. deadlines for submitting take back requests, shorter deadlines for replying to requests for information, deadlines for replying to requests on humanitarian grounds as well as clarifying that requests on humanitarian grounds can be made at any time);
- Clarification of the cessation of responsibility (e.g. under which circumstances should the cessation clauses apply, which Member State bears the burden of proof);
- Clarification of the circumstances and procedures for applying the discretionary clauses (humanitarian and sovereignty);
- Extension of the existing dispute settlement mechanism (to cover matters of dispute on the application of the entire Regulation);

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<sup>1</sup> SEC(2008)2962.

- Addition of rules on transfers (e.g. rules on erroneous transfers and costs for transfers as well as a new provision on the sharing of relevant information before transfers are carried out);
- Insertion of a provision on the organisation of a compulsory interview (to gather all necessary information in view of identifying the Member State responsible and to inform orally the applicant about the application of the Regulation).

**2.3. *Ensuring that the needs of applicants for international protection are comprehensively addressed and that adequate legal safeguards are foreseen under the Dublin procedure***

Several modifications are proposed to strengthen the legal and procedural safeguards for applicants for international protection and enable them to better defend their rights:

- Detailed specification of the content, form and timing for providing information to applicants for international protection, including the adoption of a common information leaflet;
- Right to appeal against a transfer decision, including the right to legal assistance/representation along with the obligation of competent authorities to decide whether or not the transfer should be suspended and the right of the person concerned to remain on the territory pending such a decision;
- Inclusion of a provision recalling the principle that a person should not be held in detention for the sole reason that he/she is seeking international protection;
- Clarification of several provisions in order to guarantee respect for the principle of effective access to the asylum procedure;
- Extension of the right to family reunification to include family members who are beneficiaries of subsidiary protection and who reside in another Member State (*see 2.1.*);
- Reunification of dependent relatives is made compulsory;
- Enlargement of the protection afforded to unaccompanied minors by, inter alia, allowing reunification not only with the nuclear family but also with other relatives present in another Member State;
- Introduction of a new provision dealing with guarantees for minors;
- Extension of the definition of 'family members' as far as minors are concerned, in order to ensure better protection of the 'best interests of the child';
- Exclusion, under certain circumstances, of the possibility of sending back an applicant for whom one of the family unity criteria can apply;

- For reasons of clarity, the 'sovereignty' and the 'humanitarian' clauses are brought together under the same Chapter, called 'discretionary clauses';
- Obligation to obtain the consent of the applicant is retained in order to avoid that the 'sovereignty clause' works against the applicant;

Your rapporteur supports the above-mentioned principles, and thus the proposed modifications. In addition, your rapporteur proposes a few minor amendments.

**2.4. *Addressing situations of particular pressure on Member States' reception capacity facilities and asylum systems, as well as situations where there is an inadequate level of protection for applicants for international protection***

The current Dublin system does not foresee a mechanism that would, in cases of particular pressure on a Member State with limited reception and absorption capacities, allow for the suspension of Dublin transfers if these Dublin transfers would add to the burden on that Member State. The same goes for cases where there are concerns that Dublin transfers could result in applicants not benefiting from adequate standards of protection in the responsible Member State, in particular in terms of reception conditions and access to the asylum procedure.

Your rapporteur would actually wish that these proposed provisions could be considered as superfluous. However, the reality is different. In fact, she is (for example) seriously concerned about the differences in decisions to recognise or reject asylum requests from applicants from the same countries of origin. As observed by the Commission in the Policy Plan on Asylum<sup>1</sup>: 'Even after some legislative harmonisation at EU level has taken place, a lack of common practice, different traditions and diverse country of origin information sources are, among other reasons, producing divergent results. This is not only creating secondary movements, but goes also against the principle of providing equal access to protection across the EU.' Without a doubt, large discrepancies between asylum decisions (even within similar caseloads) will continue to exist if Member States cannot get their act together.

The ultimate objective pursued at EU level is to establish a level playing field and a system, which guarantees that persons genuinely in need of protection have access to a high level of protection under equivalent conditions in all Member States, while, at the same time, dealing fairly and efficiently with those found not to be in need of protection. As highlighted in the Commission's Communication on strengthened practical cooperation<sup>2</sup>: 'Community involvement in this field has as its foundation the need for solidarity among Member States in addressing a challenge that, in an EU without internal borders, cannot be effectively dealt with by individual countries.' Your rapporteur considers 'solidarity and fair sharing of responsibility' as one the cornerstones of common EU policies indeed. Partnership and cooperation for the purpose of managing inflows of people applying for asylum or subsidiary/temporary protection is therefore crucial.

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<sup>1</sup> COM(2008)0360. p. 4.

<sup>2</sup> COM(2006)0067, p. 2.



Although your rapporteur supports the provisions on the 'temporary suspension of transfers' (Article 31) as a matter of principle, it must be clear that the Dublin system was never devised as a burden sharing instrument. In addition, she would like to stress the *fact that the Dublin system in itself, as spelled out in the Impact assessment<sup>1</sup>, is not a cause of particular asylum pressure or overburden on Member States. She therefore fears that these provisions will turn out to be a political statement rather than an effective instrument to improve standards and/or to seriously support a Member State that faces a particularly urgent situation which places an exceptionally heavy burden on its reception capacities, asylum system or infrastructure.*

In its Policy Plan on Asylum the Commission stated that 'the best way to ensure a high degree of solidarity is not to adopt a new overarching instrument, but to put at the disposal of Member States a series of mechanisms, which will help them cope with the variety of challenges they are faced with<sup>2</sup>. Your rapporteur agrees, but just to a certain extent. She is of the opinion that the past years have shown that the existing forms of practical cooperation among Member States (in order to align their interpretation of the principle of 'solidarity and fair sharing of responsibility') are not in any way sufficient to improve standards and/or to address the problems that a number of Member States are facing because of, for example, their geographical position and/or demographic situation.

**Improving standards and/or Member States' solidarity, should thus (in a way) be forced by introducing binding instruments for all Member States:**

1. Setting up teams of national asylum experts that assist Member States experiencing high numbers of asylum seekers (e.g. in guaranteeing adequate reception conditions, processing applications within the prescribed time limits and procedures);
2. Setting up a reallocation scheme to enable beneficiaries of international protection to be received by a Member State other than the country which has granted them the benefit of that protection.

**In addition the Commission is requested to make full use of its possibilities to start up infringement procedures if non-compliance with community law persists (in particular with regard to access to the asylum procedure and adequate reception conditions).**

Clearly, your rapporteur is of the opinion that solidarity cannot be confined to the granting of financial resources only. However, she does (of course!) welcome the Commission's intention to launch a study in the course of 2009 to evaluate possible methods of improving the impact of EU financial solidarity (including the European Refugee Fund) and to assess whether the existing financial instruments provide effective support to the challenges Member States face in addressing strong irregular migratory pressures.

### **3. Some remarks**

From a political point of view it is apparent that Member States find it difficult to effectively

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<sup>1</sup> SEC(2008)2962.

<sup>2</sup> COM(2008)0360, p. 8.

harmonise quality standards as well as to share responsibility. Standards agreed upon so far are in great contrast with the high ambitions as first expressed in 1999. In fact, the highest common denominator is the very minimum. As a consequence huge differences and divergences continue to exist in practice. The Asylum Procedures Directive, for example, is actually an enumerative description of all existing asylum policies in the EU Member States. So it provides for a number of procedural standards rather than for a standard procedure. In this respect the desired harmonisation clearly failed. Furthermore, if secondary movements are to be avoided, effective harmonised reception conditions are of utmost importance. However, despite the Reception Conditions Directive, here also the wide margins result in negating the desired harmonisation effect. Unfortunately the same applies to the eligibility criteria for granting a protection status.

It is therefore essential to improve the conditions under which persons seeking protection in the EU can effectively present and pursue their claims, to boost the capacity of all stakeholders involved in order to improve the overall quality and to provide national asylum administrations with adequate tools enabling them to efficiently manage asylum flows and at the same time prevent fraud and abuse. The fact that improving quality, in combination with more consistency and solidarity, is not only in the interest of the asylum seekers but also in the interest of the Member States themselves does not (yet?) seem to get through. Better quality decision-making, however, will reduce the number of challenges to negative decisions resulting in vast cost and time savings. Furthermore, greater coherence in Member States' practices is necessary in order to effectively address secondary movement within the EU.

Despite all promises and agreements many Member States have enormous difficulties with living up to their promises. Even the transposition of the current four main legal instruments into national law did not go smoothly in terms of timing and accuracy and the interpretations of the legal instruments differ significantly between the Member States. Far from taking a European perspective, the political sensitivities around asylum and migration are such that Member States remain wedded to national policies of deterrence and deflection.

A better and more harmonised standard of protection through further alignment, as well as enforcement, of Member States' laws is the right (in fact: the only) way forward. In order to achieve this aim the Commission has not only proposed the recast of the Dublin Regulation, but also the recast of the Reception Conditions Directive as well as the EURODAC Regulation. The Commission's proposals amending the Qualification Directive (2004/83/EC) and the Asylum Procedures Directive (2005/85/EC) will be submitted in 2009. In addition, the Commission will propose the establishment of a European Asylum Support Office (providing practical assistance to Member States in taking decisions on asylum claims).

As a final remark your rapporteur wishes to express some concerns on the order of the above-mentioned Commission's proposals being submitted to Parliament and Council. Within the framework of better law-making, it would have been more logical if the revision of the Asylum Procedures Directive (2008/85/EC) would have been added to the current 'asylum package' (Dublin, EURODAC, Reception conditions and European Asylum Support Office). This would have allowed an enhanced coherence amongst the different asylum instruments.



## ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

COMMITTEE ON LEGAL AFFAIRS  
CHAIRMAN

Ref.: D(2009)19604

Mr Gérard DEPREZ  
Chairman  
Committee on Civil Liberties, Justice and Home Affairs  
ASP 09G206  
BRUSSELS

***Subject: Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)***  
(COM(2008)820 - C6-0474/2008 - 2008/0243(COD)

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 80a on Recasting, as introduced into the Parliament's Rules of Procedure by its Decision of 10 May 2007.

Paragraph 3 of that Rule reads as follows:

*"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.*

*In such a case, over and above the conditions laid down in Rules 150 and 151, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.*

*However, amendments to the parts which have remained unchanged may be admitted by way of exception and on a case-by-case basis by the chairman of the above committee if he considers that this is necessary for pressing reasons relating to the internal logic of the text or because the amendments are inextricably linked to other admissible amendments. Such reasons must be stated in a written justification to the amendments".*

Following the opinion of the Legal Service, whose representatives participated in the

meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal or in the opinion of the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

Furthermore, pursuant to Rules 80a(2) and 80(3), the Committee on Legal Affairs considered that the technical adaptations suggested in the opinion of the abovementioned Working Party were necessary in order to ensure that the proposal complied with the recasting rules.

In conclusion, after discussing it at its meeting of 31 March 2009, the Committee on Legal Affairs, by 17 votes in favour and no abstentions<sup>1</sup>, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in keeping with its suggestions and in accordance with Rule 80a.

Yours faithfully,

Giuseppe GARGANI

*Encl.: Opinion of the Consultative Working Party.*

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<sup>1</sup> The following Members were present: Giuseppe Gargani (Chairman), Carlo Casini, Bert Doorn, Klaus-Heiner Lehne, Hartmut Nassauer, Eva-Riitta Siitonen, Jaroslav Zvěřina, Tadeusz Zwiefka, Lidia Joanna Geringer de Oedenberg, Neena Gill, Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Francesco Enrico Speroni, Monica Frassoni, Jacques Toubon, Véronique Mathieu.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



GROUPE CONSULTATIF  
DES SERVICES JURIDIQUES

Brussels,

**OPINION**

**FOR THE ATTENTION OF      THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person  
COM(2008) 820 final of 3.12.2008 - 2008/0243 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 21 January 2009 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At that meeting<sup>1</sup>, an examination of the proposal for a regulation of the European Parliament and of the Council recasting Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

national resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) In Article 11(1), the wording "*present in another Member State*" (identified with double strikethrough and grey shaded type) occurs twice. That wording, which does not appear in the existing text of Article 15(2) of Regulation (EC) No 343/2003, should not have been introduced into the proposed text for Article 11(1).

2) In Article 17(2), third subparagraph, the initial words "*The requested Member State shall carry out*", which are already present in the existing text of Article 13(3) of Commission Regulation (EC) No 1560/2003, should not have been presented between adaptation arrows.

3) In the deleted part of text appearing between Article 24 and Article 25, the wording of Article 20(3) of Regulation (EC) No 343/2003 ("*The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 27(2)*") should have been presented without grey shaded type.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing texts, without any change in their substance.

C. PENNERA  
Jurisconsult

J.-C. PIRIS  
Jurisconsult

C.-F.DURAND  
Director General

## PROCEDURE

<b>Title</b>	Application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast version)		
<b>References</b>	COM(2008)0820 – C6-0474/2008 – 2008/0243(COD)		
<b>Date submitted to Parliament</b>	3.12.2008		
<b>Committee responsible</b> Date announced in plenary	LIBE 3.2.2009		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 3.2.2009		
<b>Not delivering opinions</b> Date of decision	JURI 31.3.2009		
<b>Rapporteur(s)</b> Date appointed	Jeanine Hennis-Plasschaert 20.1.2009		
<b>Discussed in committee</b>	16.3.2009	16.4.2009	27.4.2009
<b>Date adopted</b>	27.4.2009		
<b>Result of final vote</b>	+: 30	–: 0	0: 0
<b>Members present for the final vote</b>	Emine Bozkurt, Mihael Brejc, Carlos Coelho, Panayiotis Demetriou, Gérard Deprez, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Kinga Gál, Jeanine Hennis-Plasschaert, Magda Kósáné Kovács, Roselyne Lefrançois, Claude Moraes, Martine Roure, Vladimir Urutchev		
<b>Substitute(s) present for the final vote</b>	Simon Busuttil, Elisabetta Gardini, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Jean Lambert, Antonio Masip Hidalgo, Nicolae Vlad Popa, Johannes Voggenhuber		
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Margrete Auken, Mariela Velichkova Baeva, Carmen Fraga Estévez, Anne E. Jensen, Helmuth Markov, Manolis Mavrommatis, Willem Schuth, Gabriele Zimmer		