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THE EUROPEAN UNION**

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from: Presidency  
to: Permanent Representatives Committee (Part II)  
on: 20 March 2013

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No. prev. doc.: 6377/13 ASILE 5 CODEC 322  
No. Cion prop.: 11207/11 ASILE 45 CODEC 980

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

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**Introduction**

In June 2011, the Commission submitted to the European Parliament and the Council an amended proposal for a recast of the Asylum Procedures Directive (11207/11). Given that the European Parliament already established a position at first reading on the basis of the initial proposal of October 2009, the aim of the informal trilogues has been to find agreement in early second reading. The United Kingdom, Ireland and Denmark are not taking part in the adoption of the recast of the Asylum Procedures Directive.

## Outstanding issues

The Asylum Procedures Directive is part of a series of proposals aimed at establishing a Common European Asylum System (CEAS).

In the previous seven trilogues on the Asylum Procedures Directive, Council and Parliament in close cooperation with the Commission, have succeeded in converging views on most issues. The main issue which remains outstanding concerns the special rules for respectively victims of torture and other serious forms of violence (Article 24) and unaccompanied minors (Article 25) as well as the related Article 31(8) and recitals (16c), (23), (23a) and (26). On these issues, the Presidency has prepared compromise suggestions following intensive discussions both within Council and with the European Parliament and the Commission. In essence, the Presidency suggestions aim at balancing, on the one hand, adequate procedural guarantees for victims of torture and unaccompanied minors and, on the other hand, concerns that such guarantees should not result in misuse of the asylum system.

The Presidency submits the following compromises to Permanent Representatives Committee. Changes compared to the Council Position as endorsed in June 2012 by the Committee of Permanent Representatives are indicated in **bold** and changes compared to the suggestions examined by the Justice and Home Affairs Counsellors on 13 March (document 6377/13) are indicated by underlining.

[A consolidated text, which contains all issues on which Council and European Parliament have reached agreement as well as the Presidency suggestions for the issues still outstanding, appears in ADD 1 to this note.]

## Presidency compromise suggestions

### New recitals

- (16c) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not *per se* entail an automatic recourse to border or accelerated procedures.

Recital (16c) replaces Article 31(8) which is to be deleted.

~~8. The fact that an application for international protection was submitted after an irregular entry into the territory or at the border, including in transit zones, shall not *per se* entail an automatic recourse to the procedure at first instance pursuant to paragraph 6.~~

- (23) Certain applicants may be in need of special procedural guarantees due to *inter alia* their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or consequences of torture, rape or other serious forms of psychological, physical or sexual violence. **Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken.** Those applicants should be provided with adequate support including sufficient time, in order to create the conditions necessary for their effective access to procedures and presenting the elements needed to substantiate the application for international protection.

- (23a) Where adequate support cannot be provided to an applicant with special procedural needs in the framework of accelerated or border procedures, such an applicant should be excluded from those procedures. Special procedural needs of a nature that could prevent the application of accelerated and border procedures should also imply that the applicant is provided with additional guarantees in cases where his/her appeal is not automatically suspensive, with a view to making the remedy effective in his/her particular circumstances.**

- (26) The best interests of the child should be a primary consideration of Member States when implementing this Directive, in line with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child. **In assessing the best interest of the child, Member States should in particular take due account of the minor's wellbeing and social development, including his/her background.**

#### Article 24

1. Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.
2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive [.../2013/EU] (Reception Conditions Directive) and need not take the form of an administrative procedure.
3. Member States shall ensure where applicants have been identified to be in need of special procedural guarantees, they are provided with adequate support, ~~including sufficient time,~~ in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

**Where such adequate support cannot be provided within the framework of the procedures referred to in Articles 31(6) and 43, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply, Articles 31(6) and 43. Where Member States apply Article 46(6) to applicants to whom Articles 31(6) and 43 cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees foreseen in Article 46(7).**

4. Member States shall ensure that special procedural needs are also addressed, in accordance with this Directive, if they become apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25

[...]

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

**Where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, Member States may:**

- (a) **apply or continue to apply Article 31(6) only if:**
  - (i) **the applicant comes from a country which satisfies the criteria to be considered a safe country origin within the meaning of this Directive; or**
  - (ii) **the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or**
  - (iii) **the applicant may for serious reasons be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.**
- (b) **apply or continue to apply Article 43, in accordance with Articles 8 to 11 of Directive [.../2013/EU] [the Reception Conditions Directive], only if:**
  - (i) **the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive;**  
**or**

- (ii) the applicant has introduced a subsequent application; or
- (iii) the applicant may for serious reasons be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law; or
- (iv)- there are reasonable grounds to consider a country which is not a Member State as a safe third country for the applicant, pursuant to Article 38; or
- (v) the applicant has misled the authorities by presenting false documents;  
or
- (vi) in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality.

Member States may apply the points (v) and (vi) only in specific cases where there are objective serious grounds to consider that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision and provided that the applicant has been given full opportunity, taking into account the special procedural needs of unaccompanied minors, to show good cause for the actions referred to in points (v) and (vi), including by consulting with his/her representative.

- (c) **consider the application as inadmissible in accordance with Article 33(2)(c) if a country which is not a Member State is considered as a safe third country for the applicant pursuant to Article 38 provided that this is in the minor's best interest;**
- (d) **consider the application as inadmissible in accordance with Articles 33(2)(a), (b) and (d);**
- (e) **consider the application as manifestly unfounded in accordance with Article 32(2);**
- (f) **apply the procedure referred to in Article 20(3) when the minor's representative has legal qualifications in accordance with national law.**

**Without prejudice to Article 41, in applying Article 46(6) to unaccompanied minors, Member States shall provide at least the guarantees foreseen in Article 46(7) in all cases.**

7. [...]

Another issue which remains outstanding between Council and European Parliament is Article 9(2) on extradition. On this issue the Presidency suggests to maintain the Council Position in the trilogue.

## **Conclusion**

In keeping with the European Council's commitment to establish a Common European Asylum System, the Presidency invites the Permanent Representatives Committee to examine the compromise suggestions with a view to endorsing of a mandate as the basis on which Council and European Parliament would seek to find an overall agreement on the Asylum Procedures Directive in the 8th trilogue on 21 March 2013.