

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 21/10/2009 - Legislative proposal

PURPOSE: to recast Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: work on the creation of a Common European Asylum System (CEAS) started in May 1999, on the basis of the principles approved by the Tampere European Council. During the first phase of the CEAS (1999-2005), the goal was to harmonise Member States' legal frameworks on the basis of minimum standards. [Directive 2005/85/EC](#) was the last of the five pieces of EU asylum legislation. It aims to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

This proposal falls within the [Policy Plan on Asylum](#) which provides for the second phase of the CEAS. It aims to address the deficiencies in procedures for granting and withdrawing international protection and to ensure higher and more harmonised standards of protection, thus progressing towards a **common asylum procedure** and a uniform status.

The amendments that have been proposed are drawn from the responses received to the Commission's consultation on the [Green Paper on the future of the Common European Asylum System](#) which highlighted the proliferation of disparate procedural arrangements at national level and deficiencies regarding the level of procedural guarantees for asylum applicants, which are likely to give rise to **gaps in protection and the risk of *refoulement***.

Given that this lack of uniformity is a source of uncertainty for asylum seekers and blocks the advent of a truly common asylum system, the Commission has proposed the recasting of the 2005 text.

IMPACT ASSESSMENT: the impact assessment mainly focused on the points that appeared the most controversial, as well as those that will require additional financial resources. At the end of the analysis, a number of options emerged to strengthen and harmonise EU asylum procedures.

The preferred option provides for the **establishment of harmonised procedural guarantees, notions and principles essential in Community law**. In harmonising procedural arrangements, the preferred option is likely to guarantee access under equivalent conditions throughout the Union and a more **equitable sharing of the 'burden' between the Member States**.

It is also an important step in the process of a single asylum procedure, the principle of *non-refoulement* and, more generally, respect for fundamental rights.

CONTENT: the envisaged measures are expected to improve the coherence between EU asylum instruments, simplify, streamline and consolidate procedural arrangements across the Union and lead to more robust determinations at first instance, thus preventing abuse and improving efficiency of the asylum process.

Main objective of the recasting of the directive: the main objective of this proposal is to ensure higher and more coherent standards on procedures for granting and withdrawing international protection. It also

aims at improving both the **efficiency and the quality of decision making** by “frontloading” services, advice and expertise and encouraging Member States to deliver, within a reasonable time, robust determinations at first instance.

The improved efficiency and quality of the asylum process should:

- (a) enable MS to quicker distinguish between asylum seekers and other migrants in mixed arrivals, thus optimising labour and administrative resources needed to establish and complete applicable procedures (return, asylum, humanitarian status, extradition etc.);
- (b) allow the asylum authorities to take robust decisions, based on complete and properly established factual circumstances of the claim, improve the defendability of negative decisions and reduce risk of their annulment by appeal bodies;
- (c) enable the asylum personnel to better identify cases of unfounded and abusive applications, including those based on false identity or nationality;
- (d) reduce Member States' reception costs and support their efforts to remove failed asylum seekers from the territory since quality determinations will be delivered quicker and more cases will result in a final decision already in the first instance.

Genuine refugees and persons in need of subsidiary protection would enjoy quicker access to entitlements set out in the [Qualification Directive](#).

Lastly, the proposal aims at simplifying and **consolidating procedural notions and devices** and improving consistency between asylum instruments. This should, among other things, limit the phenomenon of secondary movements of asylum seekers amongst Member States, to the degree that such movements are generated from divergent procedural arrangements.

The **main amendments** proposed are as follows:

(a) measures to ensure the consistency between different asylum instruments: the proposal provides for a **single procedure**, thus making it clear that applications should be considered in the light of both forms of international protection set out in the Qualification Directive (refugee status and subsidiary protection status). It further specifies the rules applicable in the single procedure, such as a mandatory sequence of an **examination of the protection needs** in relation to refugee status and subsidiary protection status, and extends the present rules on the withdrawal of refugee status to cases of the withdrawal of subsidiary protection.

(b) scope: the proposal makes it clear that the procedural principles and guarantees set out in the Asylum Procedures Directive apply to **applicants who are the subject to procedures pursuant to the Dublin Regulation** in the second Member State. It underlines that the notion of implicit withdrawal of applications should not be an obstacle for applicants to re-access asylum procedures in the responsible Member State.

(c) access to procedures: the proposal provides for a number of guarantees aimed at enhancing access to asylum procedures:

- it explicitly includes territorial waters in the scope of the Directive and specifies the obligations of border guards, police and personnel of detention facilities;
- it provides for a time limit for completing formalities related to the lodging of an application;
- it introduces guarantees aimed at enabling *de facto* asylum seekers to articulate their request for protection when they are present at the border crossing points or pre-removal detention facilities.

(d) procedural guarantees in procedures at first instance: the proposal aims to increase the overall level of fairness in asylum procedures, thus leading to more consistent application of agreed procedural principles and guarantees. The proposed changes would:

- reduce exceptions to the procedural principles and guarantees set out in the present Directive. In particular, the proposal **deletes the possibility to omit a personal interview in accelerated procedures**;
- provide for additional guarantees, such as the right to free legal assistance for applicants for international protection in procedures at first instance;
- introduce special guarantees for vulnerable asylum applicants. These include, among other things, rules dealing with medico-legal reports, exemption of certain categories of applicants from accelerated or border procedures and procedural arrangements aimed at establishing the elements of the application in cases involving gender and/or age based persecution.

(e) prevention of abuse of procedures: the measures envisaged would also contribute to preventing abuse of procedures by improving applicants' awareness of applicable requirements leading inter alia to better compliance with procedural obligations. They would also support efforts of asylum authorities to take **defendable and robust decisions**, based on complete and properly established factual circumstances of the claim. It is in this context that the following changes are made with a view to **strengthening procedural arrangements**:

- **inadmissibility decisions:** according to the proposal, the applicant concerned should be able to make his/her views with regard to the application of the inadmissibility grounds known to the authorities before a decision to consider an application inadmissible has been taken;
- **notion of a safe third country:** the proposal deletes the European safe third country notion and incorporates the grounds of subsidiary protection in the list of material requirements for the application of the safe third country notion;
- **manifestly unfounded applications:** the proposal also revises the present arrangements for accelerated procedures providing for a limited and exhaustive list of grounds for an accelerated examination of manifestly unfounded applications and underlines that the determining authority should be given sufficient time to carry out a rigorous examination of an application in such cases. These measures are further strengthened by underlining the principle of a **single determining authority**. The latter amendment accommodates institutional arrangements of the majority of Member States and is indispensable with a view to ensuring the availability of institutional expertise and delivering robust determinations, based on complete and accurately established factual circumstances;
- **time limits for procedures at first instance:** the envisaged general **6 month time limit** accommodates legislative amendments and/or practices of the majority of Member States, consulted in the process of preparing the amendments. It is instrumental in improving the efficiency of examinations, reducing reception costs, facilitating removal of failed asylum seekers and ensuring quicker access to protection for genuine refugees and persons in need of subsidiary protection. The amendments also provide for the possibility of extending the time limit for 6 more months in individual cases;
- **subsequent applications:** the proposal further consolidates the Directive's provisions dealing with subsequent applications with a view to enabling Member States to subject a subsequent application to an admissibility test in line with the *res judicata* principle and to derogate from the right to remain in the territory in cases of multiple subsequent applications thus preventing abuse of asylum procedures.
- **safe country of origin:** the proposal deletes the notion of a minimum common list of safe countries of origin and consolidates the common objective criteria for the national designation of third countries as safe countries of origin.

These notions and devices have been revised to providing asylum authorities with necessary procedural tools to prevent / respond to abuse and process quickly clearly unfounded or less complex applications. In order to reduce the root causes of repeated applications, the proposal makes it clear that the applicant and the determining authority should take all necessary efforts to establish and assess the elements of the initial application in line with the cooperative requirement set out in Article 4(1) of the Qualification Directive.

(f) access to effective remedy: lastly, the proposal facilitates access to effective remedy for asylum applicants in line with Community and international obligations of Member States. The proposal provides for a **full and *ex nunc* review of first instance decisions** by a court or tribunal and specifies that the notion of effective remedy requires a review of both facts and points of law. Furthermore, the proposal aims at bringing the appeal proceedings pursuant to the Directive in line with the "equality of arms" principle and, subject to limited exceptions, provides for **automatic suspensive effect** of appeals against first instance decisions on applications for international protection.