Common procedures for granting and withdrawing international protection. Recast

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Sylvie GUILLAUME (S&D, FR) on the proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast).

The committee recommends that the European Parliament's position adopted in first reading following the ordinary legislative procedure amends the Commission's proposal as follows:

Definitions: Members clarify the concept of "**applicant with special needs**" (due to age, gender, sexual orientation, gender identity, disability, physical or mental illnesses, etc.). They also add a new definition of "**family members**" who are those who are present in the same Member State as the applicant for international protection (spouse, unmarried partner, minor children, etc.).

The determining authority: Members sought to secure a more consistent application of the concept of "determining authority" and "competent authority" in line with the principle of a **single determining authority**. Members consider the expression 'deal with requests for international protection' is extremely vague. They have therefore amended the proposal so that throughout the text it is specified that authorities other than the determining authority are competent **only to register applications** and forward them to the determining authority for examination.

Strengthening procedural guarantees: on the whole, Members sought to strengthen the minimal procedural guarantees for asylum seekers, notably in regard to the case law of the Court of Justice of the EU and the European Court of Human Rights, in particular in respect of **the right to be informed, the right to be heard and the right to free legal assistance**, and ensure their consistent application in the text. Among the measures proposed are a certain number of provisions designed to guarantee the **non-refoulement** of asylum seekers. Members stress that the Member States must fully respect the principle of non-refoulement and the right to asylum which includes access to an asylum procedure for anyone wishing to claim asylum and who is within their jurisdiction **including those under the effective control of a Union body or a body of a Member State**.

Members strengthen the procedural guarantees as follows:

- **permitting the applicant to remain on the territory of a Member State during consideration of the application**: during the period when his application for international protection is being examined, the applicant should in principle have the right to remain on the territory of the Member State while waiting for the final decision of the determining authority and, in the event of a negative decision, the time to lodge an appeal;
- **personal examination by competent and qualified staff**: interviews on the **admissibility of an application for international protection** and on the substance of an application for international protection shall always be conducted by the personnel of the determining authority. Given the potentially serious consequences of an inadmissibility decision, the personal interview on the admissibility of an application must be conducted by a member of staff of the determining authority, who must have the necessary training to apply complex concepts such as safe third country and first country of asylum. The personnel examining applications should have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, child, gender, religious or sexual orientation issues. Member States shall ensure that the member of staff of the

determining authority who conducts the interview on the admissibility of the application **does not wear a uniform**;

- **talking into account sexual orientation:**personal interviews should be organised in a way which makes its possible for both female and male applicants to speak about their past experiences in cases involving gender based persecution to an interviewer of the same sex if so requested, who has **specific training** on the issue of interviews regarding gender-based persecution;
- **personal interviews with minors:** Member States should determine in their national law in which cases a minor may be offered the possibility of a personal interview, **taking due account of the child's best interests and special needs**;
- **medical examination:** Member States may use medical examinations to determine the age of unaccompanied minors where they have doubts concerning his/her age. **If those doubts persist after the medical examination, any decision shall always be for the benefit of the unaccompanied minor**. Any medical examination shall be performed in full respect of the individual's dignity, selecting the most reliable and the **least invasive exams** and carried out by qualified and impartial medical experts. Moreover, the decision to reject an application for international protection from an unaccompanied minor who refused to undergo this medical examination shall not be based on that refusal;
- **respect for applicants' dignity:**the competent authorities may search the applicant and the items he /she carries with him/her, provided the search is carried out by a person of the same sex who is sensitive to the applicant's age and culture and fully respects the principle of human dignity and physical and mental integrity;
- **information to applicant in a language he/she understands**: applicants shall be informed in a language which they understand or may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure;
- **qualifications of interpreters:** in the light of the shortcomings observed recently in the competence of interpreters, it is vital for a **code of conduct for interpreters** to be drawn up at national level. This will ensure that applicants have a genuine and proper opportunity to justify their application for protection and ensure better understanding and cooperation between interpreters and the staff conducting the interviews;
- **involvement of a legal representative if the applicant cannot lodge his/her own application:** where applicants are unable to lodge their application in person (e.g. if they are ill), Member States shall ensure that a legal representative is able to lodge the application on their behalf;
- **submission of an application for minors by a legal representative:**Member States shall ensure that a minor has the right to make an application for international protection either on his/her own or through his/her legal representative or the latter's authorised representative. This guarantee should also apply if the minor is married;
- **clear reasons for rejection of application:** Member States shall also ensure that, where an application is rejected or granted with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are clearly stated in the decision and information on how to challenge a negative decision is given in writing **at the time of issuing the decision and signed upon receipt by the recipient**;
- **burden of proof:**in the event of failure to adopt a decision, the burden of proof for challenging the granting of protection to an applicant shall be on the determining authority;
- **challenge of the application of the concept of first country of asylum**: the applicant shall be allowed to challenge the application of the concept of first country of asylum on the grounds that the first country of asylum in question **is not safe in his or her particular case**.
- **setting of time-limits for the submission of a challenge**: in view of the wide variety of time limits laid down by the Member States and the need to achieve a common asylum system, Members call for the introduction of a minimum **common time limit** to provide applicants with access to an effective remedy in law and in practice. The Member States shall set a minimum time limit of 45 working days (30 days under the accelerated procedure) during which applicants may exercise their right to an effective remedy;
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reopening of a case: in the event that an applicant request the withdrawal of his/her asylum application and when the applicant decides to reactivate his/her application once a decision to close the case has already been taken, the latter has the right to request the reopening of his application. This request for a case to be reopened may only be **made once**.

Detention: Members stress that the detention of minors shall be strictly prohibited in all circumstances. Furthermore, the arrangements for holding applicants at Member States' frontiers or transit zones should therefore satisfy the requirements laid down in this area in the Commission proposal on reception conditions.

Advice and legal representation of applicants: several new provisions have been introduced in order to strengthen the provisions regarding the legal s-assistance of applicants:

- the applicant and his/her legal adviser should have access to country of origin information and the procedure to access it;
- Such advice can be delivered by a qualified non-governmental body or by qualified professionals;
- Legal representation (and not simply assistance) should be free.

Provisions for the vulnerability of certain applicants: according to Members, the definition of a "vulnerable applicant" should cover minors, unaccompanied minors, pregnant women, persons who have been subjected to torture, rape or other serious acts of violence, such as violence based on gender and harmful traditional practices, or disabled persons. These persons benefit from free legal assistance in all the procedures covered by the Directive.

Provisions regarding children's best interests: a number of specific guarantees have been provided for in relation to minors (in particular unaccompanied minors). Besides the procedural guarantees described above, provisions have also been added to ensure that the situation of a minor is not linked to his marital status (in fact, in some countries the marriageable age may be very low, but this has no bearing on the degree of maturity or independence of the minor concerned).

Revision of the concept of safe country of origin, safe third country and safe European third country: these concepts were revised or deleted:

- **safe European third countries:** according to Members, the concept of 'safe European third countries' is unacceptable as it stands. This concept is not accompanied by any minimum guarantees or principles since both territorial access and access to the asylum procedure may be refused.
- **safe countries of origin:** in the Commission's proposal, there was an article that defined the concept of a "safe country of origin" which could be considered "safe" for a given applicant following the individual examination of his/her request. Members have, however, proposed that this concept be deleted in order to maintain the harmonised concept of "safe third country";
- **safe third countries:** as Members were in favour of setting up a truly unique European system in relation to asylum, they have revised the definition of "safe third countries". **This definition must be uniform in all Member States**. As a result, Member States would not be able to designate national lists of safe countries of origin or national lists of safe third countries. Instead, Members propose a new definition whereby, in principle, an applicant for international protection coming from a safe third country would have nothing to fear neither for his/her life nor his/her freedom if sent back. These countries would have to offer a certain number of guarantees (non-refoulement, the possibility to request refugee status or another complementary form of protection,…). **It should also be noted that the list of safe countries may only be agreed or amended by the European Parliament and the Council acting in accordance with the ordinary legislative procedure**.

Financial assistance for Member States with a disproportionate burden: in Members' view, it is necessary that in Member States that accept a disproportionately large number of asylum applications in

relation to the size of their population, financial support and administrative/technical support is mobilised immediately under the European Refugee Fund and the European Asylum Support Office respectively in order to enable them to comply with this Directive.

Report: Members want the Commission to report to the European Parliament and the Council on the application and the financial cost of this Directive in the Member States. This report will need to be presented every 2 years (instead of 5 years in the Commission's proposal).

Entry into force: lastly, Members want the proposed Directive to enter into force within 2 years of its adoption (instead of the 5 years in the Commission's proposal).