

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 01/06/2011 - Modified legislative proposal

BACKGROUND: on 6 April 2011, the European Parliament adopted a first reading position on the Commission proposal which generally supported the proposed amendments to Council Directive 2005/85 /EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

The proposal was also discussed in the Council, mainly under the Spanish Presidency of 2010. Discussions were however difficult and the Council was unable to reach a position.

By presenting the modified proposal, the Commission intends to use its right of initiative to boost the work to achieve a true Common European Asylum System which will benefit Member States and refugees alike.

The modified proposal should be viewed together with the [modified proposal on the Reception Conditions Directive](#). That proposal inter alia aims to ensure better and more harmonised reception standards for asylum seekers across the Union.

The modified proposal also relates to the [Regulation establishing the European Asylum Support Office \(EASO\)](#). Now that the EASO has started its activities, a more specific role can be foreseen for it to support Member States in a more efficient implementation of common rules.

PARLIAMENT'S POSITION: the European Parliament's resolution generally supported the Commission's proposal. Most of the proposed amendments aimed at strengthening the guarantees for applicants. Some aimed to provide more flexibility for Member States or to improve the overall coherence of the text. The substance of the resolution was taken into account in the preparation of the modified proposal, which thus incorporates many amendments either in text or in substance.

The Parliament's position also contains an important set of amendments which would lead to significant changes regarding the various safe third country notions. The Commission carefully assessed this amendment and concluded that the idea of deletion of national lists of safe countries and the adoption of common EU lists could be considered in the future. However, it will be realistic only once the EASO has the capacity to support in a sustainable manner the replacement of national lists by drafting reports on countries of origin based on relevant, reliable, accurate and up-to-date country of origin information gathered in a transparent and impartial manner, by the development of a common format and a common methodology for presenting, verifying and using information on countries of origin, and analysis of the information on countries of origin.

Although the Parliament's amendments on the various safe third country notions have not been incorporated in the modified proposal, the Commission recognises the need to further harmonise these rules. To that end, the Commission commits to organise, in an appropriate manner, a regular review of the use of these notions with the Member States and the involvement of the Parliament. This regular review process should help prepare further harmonisation in the future.

CONTENT: the main aim of this modified proposal is to simplify and clarify rules, in order to make them more compatible with the variety of national legal systems and to help Member States to apply them in a way that is more cost-effective in their particular situations.

As with the previous proposal, the overall objective remains to achieve procedures that are efficient and fair. The proposal continues to ensure full respect of fundamental rights as it is informed by developing case law of the Court of Justice of the European Union and the European Court of Human Rights, especially concerning the right to an effective remedy. Compared to the current Directive, procedural guarantees ensuring fair and efficient procedures have been revised in order to lead to more consistent application of procedural principles. The proposal also introduces more consistent and simplified procedural notions and devices, thus providing asylum authorities with necessary procedural tools to prevent abuse and quickly process clearly unfounded applications.

With a view to facilitating consistent application of the asylum acquis and simplifying applicable arrangements, the proposal provides for a **single procedure**, thus making it clear that applications should be considered in the light of both form of international protection set out in the Qualification Directive.

The amended proposal concerns the following issues:

Making implementation easier for Member States: a number of changes were made to ensure the proposal is more compatible with the variety of legal systems and other arrangements in different Member States. This concerns, for example:

- rules on decisions on the right to enter the territory,
- the possibility to postpone the taking of a decision where the situation in the country of origin is temporarily uncertain,
- and grounds for examining applications at the border. Several provisions have also been made more flexible to ensure easier implementation.

In order to enable Member States to deal appropriately with a large number of simultaneous asylum claims, rules have been revised as regards access to procedure, conducting personal interviews, and standard maximum duration of asylum procedures. Finally, all provisions have been thoroughly revised throughout the text to clarify and simplify the rules in order to facilitate discussions and ensure effective implementation.

Better addressing potential abuse: the modified proposal enhances the ability of Member States to address potential abuse of the asylum system. New rules provide that Member States may accelerate procedures and examine at the border claims where the applicant has made clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making the claim clearly unconvincing. The same applies to applicants who are a danger to national security or public order.

To better deal with applicants who abscond or fail to comply with their obligations, **rules on implicit withdrawal** of an application have also been amended. According to these rules, Member States can reject an application based on implicit withdrawal if the authorities already have sufficient elements to adequately examine the claim. In order to increase the applicants' awareness of the consequences of withdrawal, Member States are required to inform applicants about these rules at the beginning of the procedure.

'Frontloading': fast, fair and efficient procedures: frontloading means putting the adequate resources into the quality of decision-making at first instance to make procedures fairer and more efficient. A standard asylum procedure of no more than six months remains a major objective of the proposal. At the same time, the modified proposal makes a number of clarifications to enable an easier implementation of this concept taking into account the particularities of different Member States.

A key element of frontloading is **early access to support to help an applicant understand the procedure**. The modified proposal clarifies the substance of this basic support to distinguish it from the

free legal assistance available in appeals procedures. Member States are free to find the appropriate modalities to provide the support, including through non-governmental organisations, government officials, or specialised services of the state. The amendments should make the implementation of this key provision more cost-effective and dispel misunderstandings which could lead to conflicts between these rules and the general administrative law of several Member States.

The proposal also simplifies the rules on the **training that Member States have to provide to the personnel examining and taking decisions on applications**. While a high level of competence of this personnel remains the objective, as it is the only way to ensure robust and defensible decisions by the asylum authorities, the modalities are simplified and made more coherent in relation to other parts of the asylum *acquis*.

Finally, provisions on applicants in need of special procedural guarantees are simplified. The new rules are less prescriptive to give Member States more latitude and flexibility to take into account in the appropriate way the variety of potential specific situations of applicants. At the same time, the rules continue to provide for a high level of guarantees for these persons.

Guarantee access to protection: to ensure that a person who expresses a wish to request international protection has an effective opportunity to apply, the modified proposal improves the rules on the initial steps to take in the asylum procedure. In particular, it removes the potential confusion between the receipt of a complete asylum application and the basic act of registering the fact that a person is an applicant. It thus makes it easier for Member States to comply with the proposed deadline of 72 hours to register an applicant as such after his/her expression of wish to apply, which can be prolonged if respecting it is practically impossible. Moreover, it provides for simple rules on the training and instructions to be given to border guards and any other authorities likely to enter into contact with potential applicants. The new rules should help Member States implement them taking into account the diversity of their national situations.

Establish clear rules on repeated applications: even after an application for international protection has been rejected, a person must be able to reapply if his/her circumstances have changed, in order to take into account the possibility of "sur place" claims in line with the Qualification Directive. The modified proposal clarifies the rules regarding such applications to prevent their potential abuse.

According to these rules, a subsequent application is subject to a rapid and efficient preliminary examination to determine whether there are any new elements that justify further examination. If there are new elements, the subsequent application has to be examined in conformity with the general rules. If there are not, the application is declared inadmissible. To prevent abuse, Member States may then make an exception from the right to remain in the territory even if the person makes further applications for international protection.

Increased coherence with other instruments of the EU asylum acquis: the modified proposal revises a number of devices to make them more coherent with other EU asylum instruments, in particular with the [modified proposal for the Reception Conditions Directive](#). This concerns in particular provisions on special needs and vulnerable persons and border procedures.

The modified proposal also aligns provisions on training on the equivalent provisions of the EASO Regulation. It also foresees a more concrete role for the EASO in the provisions regarding training and access to procedure. The objective is to give Member States flexibility but also support. The involvement of the EASO should also foster coherence in implementation across the Union.

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