

## Basic information

**2000/0238(CNS)**

CNS - Consultation procedure  
Directive

Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System

Repealed by [2009/0165\(COD\)](#)

### Subject

7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF)

Procedure completed

## Key players

European  
Parliament

### Committee responsible

**LIBE**

Civil Liberties, Justice and Home Affairs

### Rapporteur

[KREISSL-DÖRFLER  
Wolfgang \(PSE\)](#)

### Appointed

10/01/2005

### Former committee responsible

**LIBE**

Citizens' Freedoms and Rights, Justice and Home Affairs

### Former rapporteur

[WATSON Sir Graham  
\(ELDR\)](#)

### Appointed

28/08/2001

### Committee for opinion

**AFET**

Foreign Affairs

### Rapporteur for opinion

The committee decided not to give an opinion.

### Appointed

**DEVE**

Development

[UCA Felekna \(GUE/NGL\)](#)

16/03/2005

**BUDG**

Budgets

The committee decided not to give an opinion.

**JURI**

Legal Affairs

[MOHÁCSI Viktória \(ALDE\)](#)

03/02/2005

**FEMM**

Women's Rights and Gender Equality

The committee decided not to give an opinion.

### Former committee for opinion

### Former rapporteur for opinion

### Appointed

	<b>AFET</b> Foreign Affairs, Human Rights, Common Security, Defense	DUFF Andrew (ELDR)	05/12/2000
	<b>BUDG</b> Budgets	The committee decided not to give an opinion.	
	<b>JURI</b> Legal Affairs and Internal Market	The committee decided not to give an opinion.	
	<b>FEMM</b> Women's Rights and Equal Opportunities	SÖRENSEN Patsy (V/ALE)	22/11/2000
Council of the European Union	<b>Council configuration</b>	<b>Meetings</b>	<b>Date</b>
	Justice and Home Affairs (JHA)	2618	2004-11-19
	Justice and Home Affairs (JHA)	2370	2001-09-27
	Justice and Home Affairs (JHA)	2696	2005-12-01
	Justice and Home Affairs (JHA)	2514	2003-06-05
	Justice and Home Affairs (JHA)	2396	2001-12-06
	Justice and Home Affairs (JHA)	2455	2002-10-14
European Commission	<b>Commission DG</b>	<b>Commissioner</b>	
	Justice and Consumers		

Key events			
Date	Event	Reference	Summary
20/09/2000	Legislative proposal published	COM(2000)0578 	Summary
15/12/2000	Committee referral announced in Parliament		
28/08/2001	Vote in committee		Summary
28/08/2001	Committee report tabled for plenary, 1st reading/single reading	A5-0291/2001	
20/09/2001	Decision by Parliament	T5-0472/2001	Summary
20/09/2001	Debate in Parliament		
27/09/2001	Debate in Council		
06/12/2001	Debate in Council		
03/07/2002	Modified legislative proposal published	COM(2002)0326	Summary
14/10/2002	Debate in Council		
09/11/2004	Amended legislative proposal for reconsultation published	14203/2004	Summary

21/06/2005	Vote in committee		<a href="#">Summary</a>
29/06/2005	Committee report tabled for plenary, reconsultation	<a href="#">A6-0222/2005</a>	
27/09/2005	Decision by Parliament	<a href="#">T6-0349/2005</a>	<a href="#">Summary</a>
27/09/2005	Results of vote in Parliament		
27/09/2005	Debate in Parliament		
01/12/2005	Act adopted by Council after consultation of Parliament		
01/12/2005	End of procedure in Parliament		
13/12/2005	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2000/0238(CNS)
<b>Procedure type</b>	CNS - Consultation procedure
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Directive
<b>Amendments and repeals</b>	Repealed by <a href="#">2009/0165(COD)</a>
<b>Legal basis</b>	EC Treaty (after Amsterdam) EC 063-p1
<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	LIBE/6/25149 LIBE/5/14136

Documentation gateway				
<b>European Parliament</b>				
Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0291/2001</a>	28/08/2001	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0472/2001</a> OJ C 077 28.03.2002, p. 0020-0094 E	20/09/2001	<a href="#">Summary</a>
Committee opinion	<a href="#">DEVE</a>	<a href="#">PE357.673</a>	25/05/2005	
Amendments tabled in committee		<a href="#">PE359.912</a>	03/06/2005	
Committee opinion	<a href="#">JURI</a>	<a href="#">PE357.887</a>	20/06/2005	
Committee final report tabled for plenary, reconsultation		<a href="#">A6-0222/2005</a>	29/06/2005	
Text adopted by Parliament after reconsultation		<a href="#">T6-0349/2005</a> OJ C 227 21.09.2006, p. 0019-0046 E	27/09/2005	<a href="#">Summary</a>
<b>Council of the EU</b>				
Document type	Reference	Date	Summary	

Amended legislative proposal for reconsultation	14203/2004	09/11/2004	Summary
<b>European Commission</b>			
<b>Document type</b>	<b>Reference</b>	<b>Date</b>	<b>Summary</b>
Legislative proposal	COM(2000)0578  OJ C 062 27.02.2001, p. 0231 E	20/09/2000	Summary
Modified legislative proposal	COM(2002)0326 OJ C 291 26.11.2002, p. 0143 E	03/07/2002	Summary
Commission response to text adopted in plenary	SP(2005)4139	20/10/2005	
Follow-up document	COM(2010)0465 	08/09/2010	Summary
<b>Other institutions and bodies</b>			
<b>Institution/body</b>	<b>Document type</b>	<b>Reference</b>	<b>Date</b>
EESC	Economic and Social Committee: opinion, report	CES0530/2001 OJ C 193 10.07.2001, p. 0077	26/04/2001

<b>Additional information</b>		
<b>Source</b>	<b>Document</b>	<b>Date</b>
European Commission	EUR-Lex	

<b>Final act</b>
<p>Directive 2005/0085 OJ L 326 13.12.2005, p. 0013-0034</p> <p style="text-align: right;">Summary</p>

## Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System

2000/0238(CNS) - 20/09/2000 - Legislative proposal

**PURPOSE** : to establish minimum standards on procedures in Member States for granting and withdrawing refugee status. **CONTENT** : the aim of this Directive is to establish minimum standards at Community level for asylum procedures in Member States in which refugee status is granted or withdrawn. The proposal is the first Community initiative on asylum procedures for the purpose of achieving a common European asylum system. As conclusion 15 of the Presidency at the Tampere European Council in 1999 states that in the long term Community rules should lead to a common asylum procedure in the European Union, the minimum standards for procedures in the Member States are only a first step towards further harmonisation on procedural rules. A Communication on this particular issue will be presented in November. With this proposal for a Directive, the Commission is pursuing the following aims: - providing for measures that are essential to the efficiency of Member States' procedures for granting and withdrawing refugee status; - laying down common definitions of, and common requirements for inadmissible and manifestly unfounded cases, including the safe country concepts in order to achieve a common approach among those Member States that apply these practices and concepts; - laying down time-limits for deciding in first instance and in appeal in these cases, empowering Member States to effectively process them as soon as possible; - enhancing thereby the ability of Member States to examine the asylum applications of persons that may be Geneva Convention refugees; - laying down a minimum level of procedural safeguards for asylum applicants in the procedures in Member States to ensure a common level of procedural fairness in the European Community; - laying down specific safeguards for fair procedures for persons with special needs; - setting

minimum requirements for decisions and decision-making authorities with a view to reducing disparities in examination processes in Member States and ensuring a good standard of decision making throughout the European Community. Furthermore, the Commission envisages to introduce a Contact Committee. This Committee will facilitate the transposition and the subsequent harmonised implementation of the Directive through regular consultations on all practical problems arising from its application. It will help avoid duplication of work where common standards are set, notably with respect to the situation on safe third countries and safe countries of origin.

## **Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System**

2000/0238(CNS) - 03/07/2002 - Modified legislative proposal

This amended proposal sets out a different structure for asylum procedures in Member States and amends a considerable number of minimum standards proposed by the Commission. In addition, it takes over a number of amendments of the European Parliament, either in the recitals or in the text of the proposal. The following key changes have been made: - following suggestions from certain Member States and the European Parliament, most guarantees have been modified. They have either been upgraded in terms of the level of protection accorded to applicants for asylum or have been qualified, to take into account specific circumstances or exceptions occurring in practice, methods or safeguards against abuse and certain national conditions or peculiarities; - in accordance with Council Conclusions, the classification of procedures has been re-organised. Instead of a separate admissibility procedure, applications considered as inadmissible may be processed in accelerated procedures; - following suggestions from some Member States, special standards on two new types of accelerated procedures are introduced: a procedure to examine applications lodged at the border or on the entry to the territory and a procedure in which the need to initiate a new procedure for a subsequent application is assessed; - new cases of inadmissible applications are introduced. The first is where an international criminal court has indicted the individual who has claimed asylum and the second, where an extradition request from a country other than the country of origin of the applicant is pending. Other cases of applications, where there is evidence of misconduct by the applicant or abuse of the procedure, may also be processed in accelerated procedures; - obligations to set a reasonable time limit for taking a decision under the regular procedure, to consider non-compliance with this time-limit as a negative decision against which an applicant can lodge an appeal, as well as obligations for appeal bodies to take decisions within a reasonable time have been deleted; - the obligation to introduce a two level appeal system, in which a court of law is competent at least once to review a decision is replaced by the right of every applicant for asylum to have an effective remedy before a court of law against a decision on his application, leaving the institutional arrangements for review or appeal to national discretion; - following an amendment from the European Parliament, it is proposed that the implementation of this particular asylum directive should be evaluated at intervals not exceeding two years.

## **Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System**

2000/0238(CNS) - 09/11/2004 - Amended legislative proposal for reconsultation

The Council agreed on a general approach regarding the amended proposal for a Council Directive on minimum standards for granting and withdrawing refugee status. The text of the draft Directive will be forwarded to the European Parliament for reconsultation before being adopted by the Council.

The purpose of the Directive is to set out equivalent procedures in Member States for granting and withdrawing refugee status. It includes:

- basic principles and guarantees in relation to the asylum process (e.g. access to the asylum process, right to interview, access to interpretation, access to legal representation and detention);
- procedures at first instance (e.g. provision for an examination procedure, criteria for prioritisation and acceleration of applications, safe country of origin principles, border procedures); and
- appeal procedures.

The Council also decided to postpone the establishment of a common list of safe countries of origin until after the adoption of the Directive, on the basis that, at present, it is not possible to reach agreement on such a list."

## **Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System**

2000/0238(CNS) - 05/06/2003

The Council reached agreement on certain provisions of the amended proposal Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, in particular those concerning the detention of asylum seekers and the procedure to be followed in case of implicit withdrawal or abandonment of an application for asylum. According to the agreement, Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum. Where an applicant for asylum is held in detention, Member States shall ensure that there is the possibility of speedy judicial review. Furthermore, and concerning the procedure in case of implicit withdrawal or abandonment of an application for asylum, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or to reject the application on the basis that the applicant has not established an entitlement to refugee status. The Council and the Commission also took note of the statements

presented by several Member States concerning the establishment of a common minimal list of safe countries of origin. Lastly, the Council instructed the Permanent Representatives Committee to further examine the Directive with a view to reaching an agreement within the time limit decided by the Seville European Council (end 2003).

## Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System

2000/0238(CNS) - 20/09/2001 - Text adopted by Parliament, 1st reading/single reading

By adopting the resolution by Mr Graham WATSON (ELDR, UK), the European Parliament approved the proposal together with several non-binding amendments designed to ensure that Member States adhere to the Geneva Convention and the European Convention on Human Rights and to reinforce Member States' option of adopting or retaining more favourable provisions and to ensure that the directive will not result in any reduction of existing legal protection for asylum seekers. Other amendments concerned improving access to the asylum procedure, better legal and other assistance for asylum seekers during the procedure, the provision of information to applicant, the right to a personal interview, the suspensive effect of appeals, limiting the grounds for detention, stricter criteria for the designation of safe countries and reducing grounds on which applications for asylum may be determined to be manifestly unfounded. The Parliament also states that those subject to a detention order shall be detained separately from convicted criminals or prisoners on remand and Member States shall ensure that detention is humane and respects fundamental rights of the individual including access to medical treatment and exercise of their religion.

## Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System

2000/0238(CNS) - 08/09/2010 - Follow-up document

The Commission presents a report on Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status pursuant to Article 42 and gives an overview of the transposition and implementation of the Directive in Member States, including possible problematic issues.

**To recall**, this Directive is one of five asylum instruments which laid the foundations for a Common European Asylum System (CEAS), based on the conclusions of the 1999 Tampere European Council and in line with the Hague Programme. It applies to all Member States except Denmark.

The report is based on an analysis of transposition measures notified to the Commission, consultations with Government experts, NGOs, asylum lawyers and UNHCR, etc. For those Member States which had not notified complete transposition measures at the time of preparation of the report, relevant information was gathered on the basis of legislation in force and, where relevant, draft legislation.

The report confirms that some of the Directive's optional provisions and derogation clauses have contributed to the proliferation of divergent arrangements across the EU, and that procedural guarantees vary considerably between Member States. This is notably the case with respect to the following provisions:

**Accelerated procedures:** Member States are given discretion to *prioritise* or *accelerate* any examination and, in addition, procedures may also be expedited on 16 specific grounds. The circumstances falling under these grounds may also be taken into account when rejecting an application as manifestly unfounded. Relevant national arrangements are consequently highly divergent. In some Member States, an examination may be accelerated where a specific ground applies. The number of grounds set out in national law varies significantly, and some depart from the Directive's wording. Furthermore, the various time limits applicable for completing the accelerated procedure range from 48 hours to 3 months. No time limits are established in certain Member States whilst in others they are fixed for completing certain stages of the procedure. Accelerated procedures may be conducted without offering the person the opportunity of a personal interview, attract shorter time limits for lodging appeals, or deprive appeals of automatic suspensive effect.

**Safe country of origin:** the Court of Justice has annulled the Directive's rules on procedures for the adoption and amendment of a minimum common list of safe countries of origin. As regards national designation, no SCO notion exists in three Member States. Wide divergences are identified between Member States which have SCO procedures in place. A number of Member States may rely on stand-still clauses, hence applying less rigorous criteria for the national designation, and the UK makes use of the possibility of designating part of a country as safe, or a country or part of a country as safe for a specified group of persons. While national laws generally provide for a list of SCO, they have been actually adopted only in several Member States, and the contents of these lists vary significantly.

**Safe third country:** a third country which is safe and able to offer protection in line with the 1951 Convention and with which the person has a connection. Certain Member States have not transposed this notion, whilst other Member States rarely apply it in practice. As regards material criteria for applying the concept to a third country, national rules, in general, either follow or essentially reflect the Directive's wording. Several problems are reported, for example -the applicable legislation does not provide that a third country must respect the principle of *non-refoulement*, or that an emphasis is placed on the third country's participation in refugee and human rights treaties rather than on the treatment of a person in accordance with the Directive's specific criteria.

The safe third country notion may only be applied where a *connection* with a third country, which makes it reasonable for a person to go there, is established. National measures lack detailed rules in that respect. No relevant rules are laid down in certain States and in others national rules require the authorities to establish a connection without specifying the applicable criteria. Member States may either designate safe third countries and/or apply the notion on a case by case basis. Member States' approaches vary and generally lack necessary details with respect to an individual

examination of safety for a particular person. It is the Commission's view that the persons concerned must be informed of and have an effective opportunity to rebut the application of the notion before a first instance decision is taken.

**Personal interviews:** the Directive requires Member States to conduct personal interviews under conditions which allow applicants to present their claims in a comprehensive manner. While this standard is of relevance to those applicants who due to their gender, age and/or consequences of trauma may be in need of additional support, the Directive does not explicitly set guarantees for applicants with special needs, such as gender-sensitive interviews. Some Member States, however, have put in place relevant arrangements, such as the provision of an interpreter and/or interviewer of a same sex and provision of information about gender related elements of refugee status determination. The requirement to prepare the interview report and make it available to the applicant is generally reflected in law. Practices are, however, highly divergent with some Member States producing a report others making a transcript and some providing for audio and/or visual recording. While some Member States allow the applicant the possibility to provide his/her comments on the interview document, this is not a standard practice in all Member States. The accuracy of records therefore varies. Divergent practices are reported with regard to access to the report.

**Legal assistance:** the right to consult a legal advisor is formally recognized across the EU, but Member States are divided as regards the provision of free legal assistance. Some stick to the Directive's wording, hence making it available only at the appeal stage. Others, however, go beyond this standard granting either legal aid or free legal advice already in first instance procedures. As regards the appeal stage, most Member States grant legal aid for both the first tier proceedings and for onward appeals. While some do not apply a merits test before granting legal aid, other Member States do this and national systems vary considerably as regards the applicable threshold, appeal stages and authorities in charge.

**Access to an effective remedy:** the directive requires Member States to ensure access to an effective remedy before a court or tribunal, to lay down relevant procedural rules and time limits, and to provide for arrangements regarding the right to remain pending the outcome of the appeal. In the majority of Member States, a court acts as the first tier appellate body. Time limits for lodging appeals vary significantly, and many Member States have reduced them for certain decisions. The general time limit varies ranges from 8 days to 60 days. The reduced time limits range from 2 days to 20 days.

The principle of automatic suspensive effect applies to all appeals lodged with the first tier appellate body in 6 Member States. In others, applicable exceptions are widely divergent and concern decisions, amongst others, not to further examine a subsequent application, a refusal to reopen the examination decisions taken in border procedures, inadmissibility decisions. In the majority of Member States, the first tier appeal authority has jurisdiction to review both facts and points of law. However, this does not apply to a significant minority. The Court of Justice has dealt with only one request for a preliminary ruling with respect to this Directive. This situation may change given the entry into force of the Lisbon Treaty which enables national courts of all instances to seek interpretative guidelines from the Court, hence contributing to more consistent application of the Directive.

**Conclusion:** important disparities subsist, and a number of cases of incomplete and/or incorrect transposition and flaws in the implementation of the Directive have also been identified. The cumulative effect of these deficiencies may make procedures susceptible to administrative error. It is noteworthy, in this regard, that a significant share of first instance decisions is overturned on appeal. The report shows that the objective of creating a level playing field with respect to fair and efficient asylum procedures has not been fully achieved. Procedural divergences caused by the often vague and ambiguous standards could only be addressed by legislative amendment. Accordingly, the Commission adopted on 21 October 2009 a proposal to recast the Directive in order to remedy the deficiencies identified.

## Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System

2000/0238(CNS) - 01/12/2005 - Final act

**PURPOSE:** to set the minimum standards for granting and withdrawing refugee status in the EU.

**LEGISLATIVE ACT:** Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

**CONTEXT:** in 1999 the EU Heads of State at the Tampere European Council agreed to gradually abolish national asylum procedures and replace them with a "Common European Asylum System" to be fully compatible with and based on the full application of the 1951 Geneva Convention. In so doing, the EU is committing itself to the principle of *non-refoulement*, which guarantees that nobody will be sent back to persecution. In order to realise a new European system a two step approach has been agreed upon. As a first step the Community creates *minimum, common standards* for asylum procedures *in the Member States*. As a second step the Community creates *Community rules* and a *Community common asylum procedure*. The deadline for this final stage in 2010.

The minimum standards laid down in this Directive for granting or withdrawing refugee status is the realisation of the first step towards the completion of a Common European Asylum System.

**CONTENT:** the main objective of this Directive is: to introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status. In approximating the rules for granting and withdrawing refugee status the Community is hoping to limit the secondary movement of asylum seekers between the Member States. Further, in adopting this Directive the Community is simplifying procedures considerably by abolishing twenty disparate asylum procedures and establishing one minimum set of standards. Member States will retain the right to introduce or maintain more favourable provisions for third country nationals or stateless persons seeking international protection. Decisions will be based on facts and must be made as soon as possible. Member States will not be allowed to keep those seeking asylum in detention for the sole reason that they are an asylum seeker. In cases where applicants are detained they must have recourse to a speedy judicial review.

Both the United Kingdom and Ireland have notified their wish to take part in the adoption and application of the Directive. Denmark, on the other hand, has decided not to adopt the Directive.

## Scope

The Directive will apply to all asylum applications made in the territory of an EU Member State including their border or transit zones. It will not apply to diplomatic requests nor will it apply to territorial asylum requests submitted to Member States' representations. In cases where a Member State wishes to introduce a procedure in which asylum applications are examined on the basis of either the Geneva Convention or other kinds of international protection (as defined by Directive 2004/83/EC see CNS/2001/0207) then they must apply the provisions of this Directive. On the other hand, this Directive will NOT apply to provisions spelt out in Regulation 343/2003/EC *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 national*. (For a summary of this Regulation see CNS/2001/0182).

## Guarantees

Applications for asylum can be made in person and/or at a designated place. They may also be made on behalf of dependants. The Directive establishes the following rights, requirements and guarantees:

- **The right of an asylum seeker to remain in the Member State** pending examination of the application. This right does not, however, constitute a right to a "residence permit".
- **Requirements for examining applications:** Decisions on an application must be taken individually, objectively and impartially. Applications can not be rejected on the ground that they have not been made as soon as possible.
- **Requirements for a decision:** Decisions must be given in writing though Member States are not obliged to state the reasons for rejecting an application. In cases where a decision has not been taken within six months the authorities should update an applicant on progress.
- **Guarantees:** Asylum seekers must be kept informed on progress in a language which they can understand. For this they may receive the services of an interpreter. Similarly they will be allowed to communicate with the UNHCR and they have the right to be told of the final decision in a language they understand.
- **Personal interviews:** Asylum applicants will be asked for a personal interview. This interview may be omitted in cases where a positive decision has already been taken or where the applicant is unfit/unable to be interviewed. Whether or not to interview minors is at the discretion of the Member States. The interview will normally take place without the presence of family members and will be conducted in strictest confidentiality. A report will be prepared by the authorities on the basis of such personal interviews to which an applicant will have access.
- **The right to legal representation and assistance:** Applicants may hire legal representation, at their own costs, on *matters relating to their application*. In the event of a *negative decision* they may have access to free legal assistance. The Member States retain the right to grant free legal assistance only for procedures before a court or tribunal; to those who lack sufficient resources and if an appeals procedure looks likely to succeed. Member States will be allowed to offer applicants legal advisers who have been specifically designated under national law to assist asylum applicants. The Member States must provide all necessary and relevant information on an asylum applicant to their legal adviser unless they have grounds to believe that such information would jeopardise national security or a person's security.
- **Guarantees to unaccompanied minors:** Persons who are younger than 18 years of age will be guaranteed representation as soon as possible. They will be informed of progress and the obligations they are under. In cases where a personal interview may be necessary the person conducting the interview must have knowledge of the needs of minors. Member States may (but can not force) minors to undertake a medical examinations to determine their age. In cases where this is necessary the minor will be informed, in a language which they can understand, of the procedure involved – and of the possible consequences of refusing a medical examination. The Directive specifically states that: the decision to reject an application for asylum can not be based solely on a minor's decision to refuse the medical examination.
- **Procedures in case of implicit withdrawal or abandonment of an application:** Member States can assume that an application is being withdrawn (and can therefore be rejected) when, for example, an applicant fails to provide essential information; they have failed to appear for their personal interview or when they have absconded. The file, under certain conditions may be re-opened. A Member State may not, however, regardless of withdrawal, remove a person in contradiction to the principle of non-refoulement.
- **The role of the UNHCR:** The UNHCR will be allowed to have access to: asylum seekers as well as information on individual applications.
- **The collection of information on individual cases:** Member States will not be allowed to disclose information on: individual applications for asylum; the fact that an application has been made; obtain information for the alleged persecutors which could implicate the asylum seeker and which could put themselves or their dependants in jeopardy.

## Obligations

Asylum applicants also have certain obligations. For example they must:

- report to the authorities or appear before them in person without delay or at a specified time;
- hand over documents in their possession necessary for their application process;
- inform the authorities of their residence and or address. They must inform the authorities if there is a change of address;

- allow the authorities to search them plus any items they may have on them;
- have their photograph taken; and
- allow an oral record of statements.

### Procedures at first instance

The Directive covers three basic types of procedures: regular, accelerated and specific. In cases of a "regular procedure" the provisions outlined above (or Chapter 2 of the Directive) must apply. In certain cases, however, an accelerated procedure or "examination procedure" may apply, which can be summarised as follows:

- **Examination procedure:** The Directive allows national authorities to accelerate examinations in cases, for example, where an applicant has special needs or where an application looks well founded.

In cases where an applicant clearly does not qualify as a refugee (as defined by Directive 2004/83/EC) or because they already come from a "safe third country" or from a "safe country of origin" (see below) the procedures can also be accelerated. Other reasons for accelerating or prioritising a procedure include cases where an applicant has, *inter alia*: provided false information; made inconsistent and contradictory statements; submitted a subsequent application, submitted an application merely to delay or frustrate the enforcement of an earlier or imminent decision on their removal; failed to comply with their obligations; entered a territory unlawfully or prolonged their stay unlawfully; poses a danger to national security or public order; refused to have their fingerprints taken; or submitted an application after their parents application has been rejected.

- **Specific procedures:** derogations to the "regular" procedure may apply in cases when a person makes a "subsequent" application in the same Member State. Specific procedures will also apply at border crossings or transit zones. These procedures must, it is stressed, be in conformity with the basic principles and guarantees specified under the regular procedure.
- **Inadmissible applications and unfounded applications:** Applications will be considered inadmissible in cases where: another Member State has granted refugee status; if a country (which is not a Member State) is considered a first country of asylum; if an applicant comes from a country considered a safe third country; if they have been granted leave to stay in a Member State based on Directive 2004/83/EC; if they have lodged an identical application following a final decision; or if a dependant of the applicant lodges an application where there are no facts relating to the dependant's situation which justify a separate application. An application will be considered unfounded: if an authority has established that the applicant does not qualify for refugee status as defined by Directive 2004/83/EC.

### First country asylum, safe third country, European safe third country and safe countries of origin

In view of the fact that the accelerated or examination procedure can be applied to persons coming from a "safe country of origin" and given that certain applications will be deemed inadmissible in cases where an applicant has a connection to a "safe third country", the Directive clarifies these two points. It should be noted that there is a distinct difference between a "safe third country" and a "safe country of origin" as described below. The Directive also spells out the concept of first country asylum.

- **First country asylum:** A "first country of asylum" refers to a country where an applicant has been recognised as a refugee and which can still offer the applicant adequate protection – including protection from non-refoulement. This country may not necessarily be an EU Member State.

**Safe third country:** The authorities will NOT be obliged to examine a file or application in substance when a connection to a "safe third country" can be established. This refers to any asylum seeker who could have sought (but chose not to seek) protection in a safe third country before seeking protection in the EU. The Directive provides that the EU Member States may apply a "safe third country" concept on condition that they are satisfied that a person being returned to a safe third country will be treated in accordance with certain principles. Those principles being: respect for a persons life and liberty; respect for their race, religion, nationality, membership of a particular group or political opinion; non-refoulement in accordance with the Geneva Convention; non-violation of the right to freedom from torture and cruel inhumane or degrading treatments; and the possibility of requesting refugee status in accordance with the Geneva Convention.

Applying the concept of "safe third country" will be subject to national rules and regulations. In implementing a decision based on this concept the authorities must keep an applicant abreast of developments. In cases where a third country will not permit re-entry onto its territory, the Member States must then revert back to the regular procedure. The Member States will be obliged to report, periodically, to the Commission of the countries to which this concept is applied.

In order to avoid secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as "safe" will be established.

**European safe third country:** Similarly, the authorities will NOT be obliged to examine a file or application for protection, or not carry out a full examination of a file, if a connection with a "European safe third country" can be established, where human rights standards are considered high. Again this concept applies to those seeking refuge in one particular country but who have a connection with a third state.

For example, an applicant may have transited a "safe" European (though not EU) state, not stopped to request asylum and continued on to another country where they then sought asylum. This may apply, for example, to a Georgian seeking asylum in the EU, who entered Greece illegally, where they sought protection, having transited through Bulgaria. Bulgaria may then be considered a European "safe" third country -

until that is Bulgaria becomes a member of the EU. The Directive also goes on to stipulate that, in this context, a safe third country can only be considered as such if it has: ratified the Geneva Convention; it has a prescribed asylum procedure and it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms.

A list of European safe third countries will be compiled at a later stage by the Council based on a proposal from the Commission and having consulted the European Parliament. Voting will be based on qualified majority.

- **Safe third country of origin:** The definition of a "safe third country of origin" can be found in Annex II to the Directive. It is a concept which seeks to limit persons seeking asylum for economic, as opposed to, political reasons. Thus, a safe third country of origin, under the terms of this Directive, applies to those countries that apply the rule of law within a democratic system and general political circumstances; where there is no persecution (as defined by Directive 2004/83/EC), no torture or inhuman and degrading treatment or threat of indiscriminate violence in situations of armed conflict. It can also apply to "parts of a country".

Currently the only recognised "safe third countries of origin", under the terms of this Directive, are Bulgaria and Romania. The Council, at a later stage, will adopt a minimum common list of "third countries of origin". The Council, based on a Commission proposal and following consultation with the European Parliament, will adopt the list by qualified majority. Specific provisions have also been put in place on how a country can be removed or put onto the list including, for example, consultation with the UNHCR on a countries' status. The Directive also allows the Member States to retain or introduce legislation that allows for the designation of third countries of origin and which do not appear on the minimum common list. Member States are not, however, allowed to remove countries on the agreed minimum common list.

In cases where it has been safely established that a person comes from a "third country of origin" the authorities may consider a person's application unfounded.

### **Withdrawing refugee status**

Procedures have also been established for "withdrawing" refugee status. This process can only begin once the authorities have obtained new information or findings which indicate that there are reasons to reconsider the validity of a person's refugee status. The information containing new elements must not stem from potential persecutors. If such a situation arises the authorities must inform an individual that their status is being reconsidered. Any decision to withdraw refugee status must be given in writing. Reasons in fact and in law must be stated if a decision has been taken to withdraw a person's refugee status and information on how to challenge the decision must be given in writing.

### **Appeals procedures**

The Directive specifies that applicants have the right to an effective remedy before a court or tribunal. An asylum seeker, whose application has been rejected, may seek judicial review under the following circumstances:

- if an application has been rejected on the basis that it is inadmissible;
- if an application has been rejected at the border or in a transit zone of a Member State;
- if it has been decided not to conduct an examination because the person seeking asylum has entered illegally from a safe third country;
- if the authorities refuse to re-open a file after it has been discontinued;
- if an application is rejected due to a subsequent application;
- if an application is refused following the application of specific procedures at border crossings;
- if a decision has been taken to withdraw refugee status.

### **General and final provisions**

In the final provisions, the Directive stipulates that public authorities are free to challenge any administrative or judicial decision set out in national legislation. The authorities responsible for implementing the Directive are bound by strict confidentiality clauses and lastly, the Commission will report on the application of the Directive by 1 December 2009.

DATE OF TRANSPOSITION: 1 December 2007. Concerning an asylum seeker's right to legal representation (article 15) the deadline for complying with the Directive has been set at 1 December 2008.

TRANSITION: The Member States must ensure that their laws and regulation, necessary for the implementation of this Directive, are brought into force before 1 December 2007. Procedures for the withdrawal of refugee status must start after 1 December 2007.

ENTRY INTO FORCE: 2 January 2006.

## **Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System**

The European Parliament adopted a resolution drafted by Wolfgang **KREISSL-DÖRFLER** (PES, DE) and voted by 305 votes to 302 to make amendments to the text. These amendments total 174. For a summary of the principal amendments, please see the document below dated 21/06 /2005.

The most controversial issue was the adoption of lists of safe countries of origin that member states could use to reject asylum applications by a fast track procedure. Parliament felt that any such list adopted at EU level must be a harmonised one, not a minimum one to which each member state could add as Council proposes. In addition, Parliament stated that the list should be adopted and amended by co-decision, whereas the Council said it alone should adopt it, by qualified majority, after obtaining Parliament's opinion. Parliament deleted Article 30A, which would have enabled Member States to keep or to create national lists of safe countries. Furthermore:

- Member States may apply the safe third country concept only where the third country fulfils certain criteria. These now include ratification and implementation in practice of the Geneva Convention and other international human rights treaties, in particular with reference to the principle of non-refoulement: There must be meaningful link, rather than merely a connection, between the person seeking asylum and the third country concerned.

- Parliament deleted Article 35A allowing a Member State to deny access to the asylum procedure completely if an asylum applicant is seeking to enter or has entered illegally into its territory from a "safe third country";

- Parliament's text boosts asylum-seekers' right to a personal interview and is more generous on free legal aid, insisting asylum-seekers be treated the same as nationals of the member state.

- Each person who wishes to make an asylum application must promptly receive exhaustive information about the procedure and his/her rights and obligations, in his/her own language.

- under no circumstances shall it be permitted to make use of consulates or diplomatic missions representing the authorities of third countries of which applicants for asylum say they are or are established to be nationals for purposes of verifying the applicants' nationality.

- There are a number of amendments that strengthen the rights of children. Parliament rejected the idea that if asylum-seekers are 16 years or older or will "in all likelihood" have reached adult age when a decision is taken, they do not have to be provided with a special assistant to help them make their claim.

- Parliament made a distinction between "unaccompanied child" and "separated child". The former refers to a child who has been separated from both parents and other relatives or legal or customary guardians; "separated child" refers to a child who is accompanied by an adult who is unwilling or unable to assume responsibility for long-term care of the child.

- Member states should "in principle" not keep asylum-seekers in detention centres. This is stricter wording than Council, which says they should not be detained solely because they are asylum-seekers. Parliament stated that alternatives to detention and non-custodial measures must always be considered before resorting to detention. Legal assistance must be made available and unaccompanied children may not be detained on the ground of their immigration status.

- There must be more human rights safeguards on detention. Detainees should have access to legal and medical assistance.

- Parliament felt that the same principles should apply to claims made at the borders as apply to those filed inside the territory, whereas the Council allowed for a more streamlined procedure for border applications.

- The Council's text stated that Member States shall ensure that an examination may be started to withdraw the refugee status of a particular person when new elements or findings arise indicating that there are reasons to reconsider the validity of the refugee status. Parliament has considerably softened the text by stating that Member States may begin to withdraw the refugee status of a particular person only under a list of prescribed circumstances.

- Finally, decisions taken on an application for asylum should be subject to an appeal consisting of an examination of both facts and points of law by a court of law. The applicant should be entitled not to be expelled until a court has ruled on the right to remain pending the outcome of that appeal. Applicants must be able to remain in the Member State in which the application for asylum has been made or is being examined until a final decision has been reached and the appeals procedure exhausted.

## **Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System**

2000/0238(CNS) - 19/11/2004

The Council agreed on a general approach regarding the amended proposal for a Council Directive on minimum standards for granting and withdrawing refugee status. The text of the draft Directive will be forwarded to the European Parliament for reconsultation before being adopted by the Council.

The purpose of the Directive is to set out equivalent procedures in Member States for granting and withdrawing refugee status. It includes:

- basic principles and guarantees in relation to the asylum process (e.g. access to the asylum process, right to interview, access to interpretation, access to legal representation and detention);

- procedures at first instance (e.g. provision for an examination procedure, criteria for prioritisation and acceleration of applications, safe country of origin principles, border procedures); and

- appeal procedures.

The Council also decided to postpone the establishment of a common list of safe countries of origin until after the adoption of the Directive, on the basis that, at present, it is not possible to reach agreement on such a list.