

Basic information

2009/0165(COD)

COD - Ordinary legislative procedure (ex-codecision procedure)
Directive

Common procedures for granting and withdrawing international protection. Recast

Repealing Directive 2005/85/EC 2000/0238(CNS)

Repealed by 2016/0224A(COD)

Repealed by 2016/0224B(COD)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

GUILLAUME Sylvie (S&D)

Appointed

11/01/2010

Shadow rapporteur

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WIKSTRÖM Cecilia (ALDE)

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GUILLAUME Sylvie (S&D)

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12/07/2011

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11/01/2010

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JURI

Legal Affairs





Former rapporteur for opinion


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Appointed

02/09/2009

	JURI Legal Affairs	LÓPEZ-ISTÚRIZ WHITE Antonio (PPE)	24/05/2011
Council of the European Union	Council configuration	Meetings	Date
	Justice and Home Affairs (JHA)	3151	2012-03-08
	Justice and Home Affairs (JHA)	3162	2012-04-26
	Justice and Home Affairs (JHA)	2979	2009-11-30
	Justice and Home Affairs (JHA)	3135	2011-12-13
	Justice and Home Affairs (JHA)	3096	2011-06-09
	Justice and Home Affairs (JHA)	3172	2012-06-08
	Justice and Home Affairs (JHA)	3195	2012-10-25
	Justice and Home Affairs (JHA)	3121	2011-10-27
	Justice and Home Affairs (JHA)	3207	2012-12-06
	Justice and Home Affairs (JHA)	3244	2013-06-06
	Agriculture and Fisheries	3237	2013-05-13
European Commission	Commission DG	Commissioner	
	Justice and Consumers	MALMSTRÖM Cecilia	

Key events			
Date	Event	Reference	Summary
21/10/2009	Legislative proposal published	COM(2009)0554 	Summary
12/11/2009	Committee referral announced in Parliament, 1st reading		
30/11/2009	Debate in Council		Summary
17/03/2011	Vote in committee, 1st reading		Summary
24/03/2011	Committee report tabled for plenary, 1st reading	A7-0085/2011	
04/04/2011	Debate in Parliament		
06/04/2011	Decision by Parliament, 1st reading	T7-0136/2011	Summary
06/04/2011	Results of vote in Parliament		
01/06/2011	Modified legislative proposal published	COM(2011)0319 	Summary
09/06/2011	Debate in Council		
27/10/2011	Debate in Council		Summary
13/12/2011	Debate in Council		

08/03/2012	Debate in Council		Summary
26/04/2012	Debate in Council		Summary
08/06/2012	Debate in Council		Summary
25/10/2012	Debate in Council		
06/12/2012	Debate in Council		Summary
07/06/2013	Council position published	08260/2/2013	Summary
10/06/2013	Committee referral announced in Parliament, 2nd reading		
10/06/2013	Vote in committee, 2nd reading		
10/06/2013	Committee recommendation tabled for plenary, 2nd reading	A7-0217/2013	Summary
11/06/2013	Debate in Parliament		
12/06/2013	Decision by Parliament, 2nd reading	T7-0256/2013	Summary
26/06/2013	Final act signed		
26/06/2013	End of procedure in Parliament		
29/06/2013	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0165(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 2005/85/EC 2000/0238(CNS) Repealed by 2016/0224A(COD) Repealed by 2016/0224B(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 078-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/12689






Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE452.774	15/12/2010	
Amendments tabled in committee		PE456.698	24/01/2011	
Committee report tabled for plenary, 1st reading/single reading		A7-0085/2011	24/03/2011	
Text adopted by Parliament, 1st reading/single reading		T7-0136/2011	06/04/2011	Summary
Amendments tabled in committee		PE489.395	21/05/2012	
Committee recommendation tabled for plenary, 2nd reading		A7-0217/2013	10/06/2013	Summary

Text adopted by Parliament, 2nd reading		T7-0256/2013	12/06/2013	Summary
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Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	10152/2013	04/06/2013	
Council position	08260/2/2013	07/06/2013	Summary
Draft final act	00045/2013/LEX	26/06/2013	

European Commission

Document type	Reference	Date	Summary
Document attached to the procedure	SEC(2009)1377 	20/10/2009	
Legislative proposal	COM(2009)0554 	21/10/2009	Summary
Document attached to the procedure	SEC(2009)1376 	21/10/2009	
Commission response to text adopted in plenary	SP(2011)4619	25/05/2011	
Modified legislative proposal	COM(2011)0319 	01/06/2011	Summary
Commission communication on Council's position	COM(2013)0411 	10/06/2013	Summary

National parliaments

Document type	Parliament/Chamber	Reference	Date	Summary
Contribution	NL_SENATE	COM(2009)0554	16/12/2009	
Contribution	NL_CHAMBER	COM(2009)0554	16/12/2009	
Contribution	CZ_SENATE	COM(2009)0554	22/03/2010	
Contribution	UK_HOUSE-OF-LORDS	COM(2009)0554	05/05/2010	
Contribution	PT_PARLIAMENT	COM(2011)0319	20/04/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1595/2011	26/10/2011	

Additional information

Source	Document	Date

National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act		
Directive 2013/0032 OJ L 180 29.06.2013, p. 0060		Summary

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 06/12/2012

The Council was informed of the **state of negotiations** on the various legislative proposals outstanding in relation to the Common European Asylum System (CEAS), on the basis of a Cypriot Presidency paper.

The situation on the four outstanding files can be described as follows:

- negotiations between the Council and the European Parliament on the [Dublin Regulation](#) have been finalised and the **Council adopted this political agreement without discussion**. The new rules will introduce a mechanism for early warning, preparedness and crisis management aimed at evaluating the practical functioning of national asylum systems, assisting Member States in need and preventing asylum crises. As a complement, the Council adopted conclusions (7485/12) in March 2012 on a common framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows. These conclusions are intended to constitute a toolbox for EU-wide solidarity towards those Member States most affected by such pressures and/or encountering problems in their asylum systems;
- at its meeting on 25 and 26 October 2012 the Council confirmed the **political agreement** reached on the [Reception Conditions](#) Directive which fully reflects the result of negotiations with the European Parliament. Once the Directive is formally adopted, Member States will need to transpose the new provisions into national law within two years;
- in June 2012, the Commission tabled its new proposal for a revised [Eurodac](#) Regulation which allows law enforcement authorities to access this central EU-wide fingerprint database for the purposes of fighting terrorism and organised crime, subject to strict conditions on data protection. In October 2012, the Council adopted its position with a view to negotiations with the European Parliament; trilogues are expected to start in the next few days, as soon as the Parliament has adopted its position on this legislative text;
- on the **Asylum Procedures** Directive, further progress has been made in negotiations with the European Parliament with a view to **reaching agreement before the end of 2012**. These negotiations are based on a revised proposal for a Directive which was tabled by the Commission on 1 June 2011. On 27 November 2012, the Permanent Representatives Committee (Coreper) adopted a **revised compromise package**. The negotiations between the Council and the European Parliament on the Asylum Procedures Directive are in their end phase. The positions of the Council and the Parliament have converged on many issues and **agreement is sought before the end of 2012** on the basis of a global compromise package.

Four other agreements and decisions relating to the CEAS have already been adopted. They concern:

1. the [Qualification Directive](#) providing for better, clearer and more harmonised standards for identifying persons in need of international protection which was adopted in November 2011;
2. the [Long term Residence Directive](#) adopted in April 2011;
3. the Regulation establishing the [European Asylum Support Office](#) (EASO) which started operations in the spring of 2011;
4. the Decision taken in March 2012 establishing [common EU resettlement priorities for 2013](#) and new rules on EU funding for resettlement activities carried out by Member States.

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 07/06/2013 - Council position

The Council adopted its position in first reading on the Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast).

The position on first reading is based on a compromise agreement between Parliament and Council, with the aim of concluding an agreement at this point in the procedure.

The compromise amends Directive 2005/85/CE on the following major points:

A. Training: with a view to improving the quality of the asylum procedure, the Council position establishes training requirements for the personnel of the authorities responsible in Member States for an appropriate examination of applications for international protection. The personnel of the determining authority need to be properly trained. To that end, Member States must provide for training that includes the same elements as those listed in the Regulation establishing the European Asylum Support Office, **except those relating to reception conditions**. Moreover, persons interviewing applicants must have acquired general knowledge of problems that could adversely affect the applicants' ability to be interviewed, such as **indications of possible torture**.

The same training requirements apply to personnel working for another authority that is assigned to conduct interviews where a large number of third country nationals or stateless persons simultaneously request international protection. Lastly, personnel of authorities likely to receive requests for international protection, **such as border guards and personnel of immigration authorities or detention facilities** must also receive the necessary level of training as appropriate to their tasks and responsibilities.

B. Access to the procedure: the Council position sets standards aimed at ensuring easy and timely access to the asylum procedure while taking into account the specificities of national systems. In order to ensure that applicants effectively comply with their obligations and benefit from their rights, applications should be registered as soon as possible and within specific time limits: where the application is made by the determining authority, the time limit is 3 working days after the application is made. Where such determination is made by other competent authorities, such as border guards, the time limit is 6 working days. A longer time limit of 10 working days is allowed in situations of large and simultaneous influx of applicants.

Also important for effective access to the procedure is Member States' obligation to provide third-country nationals or stateless persons detained in detention facilities or present at border crossings with **information on the possibility of making a request for international protection** where there are indications that such persons may wish to do so. Moreover, Member States must provide interpretation arrangements in detention facilities and border areas to the extent necessary to facilitate access to the procedure concerning international protection

C. Examination procedure: the Council's position provides that a procedure for examining an application for international protection needs to be concluded within 6 months after the application was lodged. Where there are complex issues, a large number of applicants or a delay due to the lack of cooperation on the part of the applicant, Member States may extend this time limit by a period not exceeding a further 9 months. An additional extension of a maximum of 3 months is allowed in exceptional and duly justified cases, where it is necessary to ensure an adequate and complete examination.

The text contains further derogations from these time limits where there is an uncertain situation in the country of origin. In any case, Member States are required to conclude the procedure within a maximum time limit of **21 months from the lodging of the application**.

In line with the aim of establishing more harmonised asylum procedures, accelerated examination procedures and border procedures can be conducted only under specific grounds, which aim to include in those procedures only applications that are likely to be unfounded, or that raise serious national security or public order concerns.

D. Information in case of derogations: where a Member State, as a consequence of a large number of persons applying simultaneously, derogates from the time limits for registration of the application and for conclusion of the examination of the application, or allows other authorities than the determining authority to conduct asylum interviews, it must inform the Commission. This information must be provided at least once a year and as soon as the reasons for applying these exceptional measures have ceased to exist.

E. Report and recording of interview: the Council's position provides for an extensive set of rules concerning the reporting on and recording of asylum interviews. It provides that Member States are required to prepare a thorough and factual report containing all substantial elements or a transcript. In addition, they may provide for an audio or audiovisual recording. Member States must also ensure that the applicant is fully informed of the content of the report or of the substantial elements of the transcript.

F. Legal information and legal assistance and representation: the Council's position provides that Member States must ensure that applicants, on request and under certain conditions, are provided with **legal and procedural information free of charge in procedures at first instance**. This must include, at least, the provision of information on the procedure in the light of the applicant's particular circumstances. Furthermore, in the event of a negative decision in first instance, Member States must, on request, provide applicants with information in order to clarify the **reasons of such decision** and explain how it can be challenged. Furthermore, Member States may provide that this legal and procedural information may be provided by non-governmental organisations, or professionals from government authorities or specialised services of the State.

In addition, Member States must ensure that, under certain conditions and in full conformity with the other asylum instruments, free legal assistance and representation is granted on request in appeals procedures. This must include, at least, the preparation of the required procedural documents and representation in the hearing before the court or tribunal of first instance on behalf of the applicant.

G. Applicants in need of special procedural guarantees: the Council's position aims at allowing applicants in need of special procedural guarantees to benefit from the rights and comply with the obligations of the Directive throughout the duration of the asylum procedure. Where applicants have been identified as needing special procedural guarantees, they must be provided with adequate support. Moreover, where such support cannot be provided within the framework of accelerated or border procedures, 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 are not allowed to apply such procedures, or must cease to apply them.

H. Minors: the Council's position provides specific guarantees to minors and unaccompanied minors while avoiding potential abuse of the system. It clarifies the conditions that apply to minors who wish to make an application **on their own behalf**. Furthermore, it specifies that interviews with minors must be conducted in a **child appropriate manner**.

As regards unaccompanied minors, the Council position establishes a set of guarantees in relation to the representative of the minor. Member States are also required to provide unaccompanied minors, free of charge, with legal and procedural information for procedures for the withdrawal of international protection. In this way, unaccompanied minors and their representatives receive a form of legal support in all procedures of the Directive (first instance, appeal and withdrawal).

Where a Member State, in the course of the asylum procedure, identifies a person as an unaccompanied minor, it may use certain procedures for processing the application for international protection if the applicant comes from a **safe country of origin**.

There are specific provisions for border procedures where, for example, the unaccompanied minor applicant has misled the authorities by presenting false documents or in bad faith, has destroyed an identity or travel document to avoid a negative decision.

Because border procedures always involve some form of detention, it is specified that unaccompanied minors may be detained only in exceptional circumstances, which must be evaluated with due regard to the best interest of the child.

Member States may declare the application of an unaccompanied minor inadmissible if the unaccompanied minor comes from a **safe third country**, which is not a Member State, only provided this is in the minor's best interest. They may also decide not to provide free legal assistance and representation to an unaccompanied minor applicant if the appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

I. Gender sensitive asylum procedures: the Council's position takes into account the notion that asylum procedures must be gender sensitive. In that light, Member States must, wherever possible, ensure that the interviewer and the interpreter are of the same sex as the applicant, if the applicant concerned so requests.

Moreover, without prejudice to any search carried out for security reasons, a search of the applicant's person in the application of the directive must be carried out by a person of the same sex in full respect of the principles of human dignity and of physical and mental integrity.

J. Subsequent applications: the Council's position clarifies the procedural rules regarding subsequent applications. Contrary to a variety of procedural arrangements for those applications possible under Directive 2005/85/EC, the Council position provides that a subsequent application is considered inadmissible when in a preliminary examination no new elements or findings arise or are presented by the applicant which significantly add to the likelihood of him being in need of international protection.

Applicants that make **subsequent applications with the sole intention of delaying removal from the territory of the Member State** put an undue strain on national asylum systems. Therefore, effective rules on subsequent applications are needed. However, Member States remain at all times bound by the principle of non refoulement which means that a person must not be sent back to a country where he could be at risk.

K. Implicit withdrawal/abandonment of an application: the Council's position lays down that, under certain conditions, Member States may assume that an applicant has implicitly withdrawn or abandoned his application for international protection. Member States may make such an assumption in two cases in particular: (i) when it is ascertained that the applicant has failed to respond to requests to provide information essential to his application or has not appeared for a personal interview, unless the applicant demonstrates within a reasonable time that his failure was due to circumstances beyond his control; (ii) when the applicant has absconded or left without authorisation the place where he lived or was held. Against that background, the Council position provides for a set of rules with regard to the reopening of an implicitly withdrawn or abandoned application. Where the person reports again to the authorities within a period of 9 months, Member States are **not allowed to treat the re-opened application or the new application as a subsequent application**.

L. Effective remedy: the Council position's establishes a set of rules on the right to remain on the territory pending an appeal which aims to fully guarantee the right to an effective remedy while acknowledging the need for effective and efficient asylum systems capable of preventing abuse. **As a rule, Member States must allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired** or, when this right has been exercised within the time limit, pending the outcome of the remedy.

However, in a limited number of cases, a Member State may provide that such automatic suspensive effect does not apply. In such cases, Member States must provide that a court or tribunal has the power to rule whether or not the applicant may remain on the territory, either upon request of the applicant or acting on its own motion.

M. In border procedures, non-automatic suspensive effect can be applied only provided that: (i) the applicant has the necessary interpretation, legal assistance **and at least one week to prepare the request** and submit to the court or tribunal the arguments in favour of granting him/her the right to remain on the territory pending the outcome of the remedy and (ii) in the framework of the examination of the request to remain in the territory, the court or tribunal examines the negative decision of the determining authority in terms of fact and law.

When non-automatic suspensive effect is applied, the applicant is allowed to remain on the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory. Furthermore, in all cases, the principle of non refoulement applies.

N. Safe third countries: the Council's position allows Member States to apply the safe country of origin, safe third country and European safe third country concepts, while recognising the need for **possible further harmonisation in the future**. To that end, Member States should take into account the guidelines and the operating manuals developed by the European Asylum Support Office and the United Nations High Commissioner for Refugees and

conduct regular reviews of the situation in those third countries. Furthermore, the Council's position underlines the importance of exchanging information from relevant sources and having regular reviews of the application of the safe third country concepts with Member States and with the involvement of the Parliament.

The Council's position clarifies the conditions for the application of those concepts as it provides that Member States must allow applicants to challenge the application of the European safe third country concept on the grounds that **the country is not safe in their particular circumstances**.

O. Other important issues: other important issues in the Council position at first reading on which the Council and the European Parliament reached a compromise concern:

- **extradition:** a Member State may make an exception to the right of an applicant for international protection to remain on the territory until a first instance decision on his application is made, where the Member State surrenders or extradites a person either to another Member State pursuant to obligations in accordance with a European arrest warrant or otherwise, or to a third country or to international criminal courts or tribunals;
- **determining authority and other competent authorities:** Member States may provide that an authority other than the determining authority is responsible for the purposes of processing cases pursuant to the Dublin Regulation or of granting or refusing permission to enter in the framework of a border procedure, subject to the conditions set out in that framework and on the basis of the reasoned opinion of the determining authority;
- **medical examination:** the Council position includes rules concerning medical examinations so as to ensure that signs that might result from past persecution or serious harm are included in the assessment of the request for international protection. These rules include provisions indicating the conditions under which the medical examination is to be paid out of public funds or when such examinations are at the cost of the applicant;
- **national security considerations:** in appeals where there are national security considerations, Member States must ensure that access to confidential information or sources is available to the courts and tribunals and establish in national law procedures guaranteeing respect of the applicant's rights of defence.

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 10/06/2013 - Commission communication on Council's position

In its communication on the Council's position on the adoption of a proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, the Commission indicates that it supports the compromise text agreed upon by the co-legislators, since the text preserved the key objectives of the Commission's proposal and is a significant improvement compared to Directive 2005/85 /EC.

While the Commission regrets a small number of changes, it can nevertheless endorse the compromise and recommend its adoption by the Parliament. The text makes a step change in the level of harmonisation of procedural guarantees in asylum procedures by introducing clear, detailed and compulsory rules, and by deleting derogations and stand-still clauses.

The main new provisions in the position on first reading is as follows:

Reinforced procedural guarantees to improve the quality of asylum procedures: the Council's position conforms to the principle of **'frontloading'** and provides a strong set of guarantees for all asylum seekers. It ensures fast and easy access to the asylum procedure. Member States must actively inform third-country nationals present at border crossing points and in detention facilities of the possibility of applying for international protection, wherever there are indications that they may wish to apply. Basic interpretation arrangements will also have to be provided to ensure access to the asylum procedure in those areas. Although the time limits to register an asylum application (even expressed very informally) have been extended compared to the Commission's proposal, it has been clarified that a person who has expressed a wish to request international protection immediately becomes an applicant and is entitled to all relevant rights, regardless of formal registration or lodging of the application.

With regard to **training of personnel**, standards are slightly higher than the Commission's proposal on training of personnel involved in the procedure. The Council's compromise specifies that authorities other than the determining authorities conducting personal interviews on the admissibility of an application should have basic training in asylum issues.

A key element of 'frontloading' as proposed by the Commission was the general deadline of six months, extending to twelve, to complete the examination of an application. This key element has been preserved, **although the maximum duration has been extended**. However, compared to the proposal, the Council's position frames better the possibility of suspending the procedure if there is an uncertain situation in the country of origin which means it is not reasonable to take a decision within the normal deadlines.

Applicants with special procedural needs, including unaccompanied minors: while the Commission regrets that the level of guarantees for unaccompanied minors has been lowered in the Council's position, the Commission can nevertheless accept this compromise since it provides an adequate level of protection. The Commission proposed to exempt unaccompanied minors from accelerated and border procedures, as well as from non-automatic suspensive effect of appeals because these procedural devices significantly reduce the time available to prove one's claim, while minors require special support to help them fully express their international protection needs.

As for border procedures, they involve detention, which the Commission believes should generally not be applied to unaccompanied minors. Lastly, non-automatic suspensive effect could jeopardise an unaccompanied minor's access to an effective remedy, guaranteed by the Charter.

The Council's position makes it possible to apply accelerated procedures to unaccompanied minors, but only in a small number of circumstances. Among those, the nationality of a safe country of origin is an objective indication that the application is likely to be unfounded; an accelerated examination of a subsequent application can be justified by a full examination of the previous application; and the third ground is a legitimate national security or public order concern.

There are **six grounds allowing Member States to use border procedures**. In addition to the three grounds for accelerated procedures, two circumstances related to admissibility are added (subsequent applications and possible application of the safe third country concept). Two more substantial additions are situations where the applicant misleads the authorities by presenting false documents, or destroys or disposes of an identity or travel document in bad faith. In themselves, those grounds would not have been acceptable to the Commission since unaccompanied minors cannot generally be expected to fully understand the necessity to cooperate with the asylum authorities. However, in the Council's position, these grounds can be used only where there are serious grounds to consider that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision, and there are additional procedural safeguards.

As regards **rules on appeals**, while there is a possibility of non-automatic suspensive effect, this is only possible with significant additional guarantees. In particular, the applicant will have at least one-week and the necessary legal assistance and interpretation to prepare the request to remain on the territory.

Regarding other categories of **persons with special needs**, the Council's position contains an unequivocal obligation to create an effective identification mechanism and to provide adequate support in the procedure. Moreover, persons whose special needs mean they cannot participate in special rapid procedures are excluded from accelerated and from border procedures and receive additional guarantees in appeals in case of non-suspensive effect, which are the same as those for unaccompanied minors. Asylum procedures also continue to be **gender-sensitive** with the possibility for applicants to request and obtain same-sex interpreters and interviewers, and gender-specific violence being taken into account in assessment of special needs. The provisions on special needs thus preserve the Commission's key objectives.

The question of **special needs** is closely linked with the use of medical reports or examinations in the asylum procedure. In this respect, the Council's position preserves the main objectives of the proposal. However, the Commission regrets that the use of the Istanbul Protocol on identification and documentation of symptoms of torture has been rendered facultative, even though the Union encourages third countries to promote the systematic application of the Protocol for documentation of torture cases.

Accelerated and border procedures and effective remedy: harmonisation of the use of accelerated border procedures, allowed in all cases under Directive 2005/85/EC, was one of the key objectives of the proposal. This objective has been preserved as the Council's position contains an exhaustive list of grounds for the use of these procedures. The compromise text adds three more grounds to the Commission's list: (i) subsequent applications **which are not inadmissible**; (ii) applicants who refuse to have their fingerprints taken for the use in the EURODAC system; and (iii) applicants who entered the territory or prolonged their stay unlawfully and, without good reason, have not presented themselves to the authorities and /or filed an application for asylum as soon as possible given their circumstances of their entry. The additional ground with most substantial impact is the last one. However, it contains important safeguards that ensure adequate protection for the applicant.

The proposal also aimed to strengthen the right to an effective remedy by setting out the **principle of automatic suspensive effect of appeal**, subject to limited exceptions. Whilst this principle remains in the Council's position, **there are more exceptions**.

Regarding **implicit withdrawal**, relevant safeguards have been included before the appeal stage; in particular, the person has the possibility to request the re-opening of his case and there is always a possibility of examining the claim as a subsequent application. Moreover, where an appeal has no automatic suspensive effect, there is the option of requesting suspensive effect and **the person must be allowed to remain on the territory while that request is processed**. There is therefore no risk of return without judicial remedy.

Lastly, in line with the case-law of the European Court of Human Rights, the Commission proposed that an appeal against a negative decision taken in a border procedure has an automatic suspensive effect. The Council's position provides instead for the same guarantees for unaccompanied minors in appeals. In manifestly unfounded cases, these guarantees can mitigate the negative consequences of non-automatic suspensive effect. In particular, they clarify that **no removal can take place pending the outcome of the request for suspensive effect**, which ensures compliance with fundamental rights obligations as informed by the case law of the European courts.

Fight against abuse: in order to ensure a balance between the objectives of protecting genuine asylum seekers and fighting abusive repeated applications, the Commission proposed to allow Member States to remove an applicant after a second subsequent application (i.e. third application), provided that the non-refoulement principle is respected. The Council's position upheld the objectives of the proposal but added an additional case where the applicant's right to remain on the territory can be removed: after an inadmissible first subsequent application made merely in order to frustrate an imminent return. **The Council argued this is required to tackle abusive last-minute subsequent applications**. The Council's position clearly specifies that the exceptions from the right to remain must be applied in line with the principle of non-refoulement.

Lastly, the Council's position also amends the Commission proposal as regards **the rules on implicit withdrawal or abandonment of the application**. The proposal's objective was to harmonise the rules regarding those situations and in particular prevent the risk of an application never been examined in substance before being rejected. This objective remains in the Council's position since the latter specifies that an application cannot be rejected without an adequate examination of its substance. The Commission regrets, however, the inclusion of the provision that an applicant's case may be reopened only once if the applicant reports back following a discontinuation of the application.

Common procedures for granting and withdrawing international protection.

Recast

2009/0165(COD) - 10/06/2013 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the recommendation for second reading contained in the report by Sylvie GUILLAUME (S&D, FR) on the Council position at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast).

The committee recommends the European Parliament to approve, unamended, the Council position at first reading.

Common procedures for granting and withdrawing international protection.

Recast

2009/0165(COD) - 12/06/2013 - Text adopted by Parliament, 2nd reading

The European Parliament approves the Council position at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast).

Parliament notes that the act is adopted in accordance with the Council position.

Common procedures for granting and withdrawing international protection.

Recast

2009/0165(COD) - 26/06/2013 - Final act

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

LEGISLATIVE ACT: Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast).

CONTENT: Parliament and the Council adopted a Directive to recast the 2005 Directive with a view to updating procedures in the Member States for granting and withdrawing international protection and to **establish common Union asylum procedures**.

The Directive is part of the package of revised texts on asylum and the setting in place of a [common European asylum system](#).

The main aspects covered by this revision may be summarised as follows:

Objective: the Directive lays down common standards on procedures for granting and withdrawing refugee status that the Member States shall apply to ensure that applications for international protection are treated in the same way irrespective of the Member States in which they are examined.

The recast of the Directive aims to make EU standards more protective for applicants for international protection and to achieve greater harmonisation of national asylum procedures.

Scope: the Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.

More extensive training requirements for personnel dealing with asylum applications: the Directive provides for more extensive training requirements for personnel of authorities that examine applications for international protection. To this end, people responsible for interviewing applicants will be required to have a general knowledge of the problems that could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.

These training requirements also apply to personnel of another authority responsible for interviews where there are simultaneous applications for international protection by a large number of third-country nationals or stateless persons. The personnel of authorities likely to deal with asylum applications (e.g. the police, border guards, immigration authorities and personnel of detention facilities) shall receive the necessary training which is appropriate to their tasks and responsibilities.

Basic guarantees: new provisions have been introduced to strengthen asylum applicants' procedural guarantees:

- **access to the procedure:** new standards have been introduced to ensure easy and timely access to the asylum procedure taking into account the specific characteristics of national systems.

The following have been revised:

- the deadlines for the presentation and registration of applications particularly when there is a large number of persons applying simultaneously;
- the type of information to be provided to asylum applicants placed in detention centres or at border crossing points, emphasising the fact that this information must be provided **in a language that the applicants are reasonably supposed to understand**;
- access to an interpreter at detention centres or border crossing points to facilitate access to the asylum procedure.

- **individual interview:** the principle of a **personal interview** is maintained between the asylum applicant and a person who is competent to assess the application. New provisions have been introduced in regard to the **recording of interviews** and their reporting. In particular, Member States must reflect the asylum interview in a report containing all substantial elements or in a transcript, inform the applicant on the content thereof and allow him, under certain conditions, to make comments. Member States may also provide for an audio or audiovisual recording of the interview. The applicants are entitled to have access to the report, the transcript and the recording.

Moreover, with a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution.

- **medical examination:** where the determining authority deems it relevant for the assessment of an application for international protection, arrangements may be made for a **medical examination** of the applicant concerning signs that might indicate past persecution or serious harm. Rules have been introduced governing this medical examination to ensure that it is undertaken by competent professionals and to define the cases of when its cost shall be covered by the applicant and when it shall be paid for out of public funds.

Time limits for the examination of an application: in principle, the examination procedure shall be concluded within six months of the lodging of the application. In the event of complex issues, delays due to the lack of cooperation of the applicant or where there are large numbers of applicants, Member States may extend the time limit for a period not exceeding a further nine months. By way of exception, a supplementary extension by a maximum of three months may be granted in duly justified circumstances.

Other derogations to the time limits are provided for if the situation in the applicant's country of origin is uncertain. In any event, Member States shall conclude the examination procedure within **a maximum time limit of 21 months from the lodging of the application**.

Provision is made for **exceptions** in the case of unprecedented numbers of applications at a border. In this case, a Member States may derogate from the above-mentioned time limits and inform the Commission accordingly.

In line with the objective of setting in place more harmonised asylum procedures, accelerated or border procedures may only be used for specific reasons; only in well-defined circumstances, where an application is likely to be unfounded or where there are serious national security or public order concerns, may Member States accelerate the examination procedure.

- **free legal assistance and representation:** provisions were introduced to ensure that, in certain conditions, legal and procedural information shall be provided **to applicants at first instance free of charge**. This information may be provided by means non-governmental organisations or professionals from government authorities or specialised services of the State. In certain cases, in appeals procedures, subject to certain conditions, applicants shall be granted free legal assistance and representation.

- **special procedural guarantees:** in certain specific cases stipulated in the Directive, procedural guarantees may be granted to applicants who are, for example, victims of torture, rape or other serious forms of psychological, physical or sexual violence. Those applicants should be provided with **adequate support**.

- **guarantees for unaccompanied minors:** with a view to avoiding **any possible misuse**, provision is made for specific guarantees for minors and unaccompanied minors. **Interviews with minors shall be conducted by a person who has the necessary knowledge of the special needs of minors** and measures have been introduced stipulating the conditions under which their application may or may not be subject to an accelerated procedure. Member States shall ensure they provide legal and procedural information for procedures for the withdrawal of international protection. Thus, unaccompanied minors and their representatives shall be provided, free of charge, with a form of legal support in the context of all the procedures that fall within the scope of the Directive (first instance, appeal, withdrawal).

Procedural guarantees shall be provided for, such as interpretation and free legal assistance, if applicants request to remain on the territory of a Member State during the appeal procedure following a negative decision on their asylum application.

If, during the asylum procedure, the competent authorities observe that a person is an unaccompanied minor, the Member States may apply certain procedures to process the application taking into account the origin of the applicant if he/she comes from a **safe country of origin**.

It should be noted that unaccompanied minors may not be kept in detention except in exceptional circumstances, which shall be assessed taking into account the best interest of the child.

Appeals procedure and withdrawal of applicant status:

- **appeal with suspensive effect:** in a limited number of cases (e.g. border procedures) and provided that certain conditions are fulfilled, a Member State may provide cases in which an appeal **does not have automatic suspensive effect** leaving it to a court or tribunal to rule whether or not the applicant may remain on the territory, either upon request of the applicant or acting on its own motion. In these cases, the applicant is allowed to remain on the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory. Furthermore, in all cases, the principle of *non-refoulement* applies.

- **rejection of an application:** provisions have been introduced whereby Member States shall have the possibility to remove from their territory, asylum seekers who have not made contact with the competent authorities within a time limit of at least **nine months**.

- **subsequent applications:** new procedural rules have been introduced concerning subsequent applications. Unlike the variety of procedures that allow the application of Directive 2005/85/EC to these applications, a subsequent application will now be considered to be inadmissible when a preliminary examination shows that **no new elements or findings have arisen or have been presented by the applicant**. Member States shall ensure that such a person is not removed contrary to the principle of *non-refoulement* and sent back to a country where he/she may be in danger.

Other related provisions:

- **safe third countries:** the Directive allows Member States to apply the concept of safe countries of origin, safe third countries and safe European third countries, while recognising that further harmonisation may be required in the future. Member States are therefore called upon to facilitate the regular exchange of information about the national application of the concepts of safe country of origin, safe third country and European safe third country and to involve the European Parliament in this.

The Directive also clarifies the conditions for the application of those concepts as it provides that Member States must allow applicants to challenge the application of the European safe third country concept on the grounds that the country is **not safe in their particular circumstances**.

- **national security considerations:** in the context of appeals, in case of national security considerations and with a view to ensuring equality of arms, Member States must provide access to the information or sources in question available to the courts and tribunals in appeal and establish in national law procedures guaranteeing respect of the applicant's rights of defence.

Report: no later than 20 July 2017, the Commission shall report to the European Parliament and the Council on the application of the Directive in the Member States and, if appropriate, propose any amendments that are necessary. In the context of this first report, the Commission shall also report on the application of the rules in relation to the reporting of the personal interview.

Territorial measures: Denmark, Ireland and the UK do not take part either in the adoption of this Regulation or in its application, in accordance with the relevant provisions of the Treaty.

ENTRY INTO FORCE: 19 July 2013.

TRANSPOSITION: a certain number of provisions enter into force on 20 July 2015 and others on 20 July 2018.

Directive 2005/85/EC is repealed.

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 08/03/2012

The Council looked, on the basis of a [presidency paper](#), at the state-of-play of negotiations on the various legislative proposals concerning the Common European Asylum System (CEAS).

Ministers instructed the Council preparatory bodies to continue their work to reach an agreement at Council level and with the European Parliament as soon as possible.

The situation on the various files can be described as follows:

- [The qualification directive](#) providing for better, clearer and more harmonised standards for identifying persons in need of international protection was adopted in November 2011 and entered into force in January 2012.
- The asylum procedures (current proposal being examined) and [reception conditions directives](#): revised proposals were tabled by the Commission on 1 June 2011. Significant progress has been made on the two instruments, in particular on the reception conditions directives where negotiations with the European Parliament are expected to start soon. **The main outstanding issues here concern the grounds for detention and access to labour market for asylum applicants.**
- [The Dublin II regulation](#) establishes the procedures for determining the member state responsible for examining an application for international protection. Further progress has been made on almost all aspects, in particular concerning a proposal to introduce a mechanism for early warning, preparedness and crisis management.
- [The Eurodac regulation](#): discussions on amendments to the rules regulating this fingerprint database are on hold pending a revised Commission proposal. Member states have requested additional provisions which would allow their law enforcement authorities to access the Eurodac central database under strict conditions on data protection for the purposes of fighting terrorism and organised crime.

Two other agreements related to the CEAS have been achieved so far. They concern the [long term residence directive](#) and the creation of the [European Asylum Support Office](#) (EASO) which started operations in spring 2011.

In addition, the Council took a decision without discussion which establishes common EU resettlement priorities for 2013 as well as new rules on EU funding for resettlement activities carried out by member states.

Common procedures for granting and withdrawing international protection. Recast

The Council took note, on the basis of a presidency paper, of the **state-of-play of negotiations** on the various outstanding legislative proposals concerning the Common European Asylum System (CEAS).

In keeping with the commitment to strengthen the CEAS by the end of 2012, the Council instructed its preparatory bodies to continue work on the various proposals.

The situation on the **four outstanding files** can be described as follows:

- **Reception conditions directives**: negotiations between the Council and the European Parliament are expected to start soon. A revised proposal was tabled by the Commission on 1 June 2011.
- **Asylum procedures directives (the present Directive)**: progress has been made, in particular regarding access to the procedure, applicants with special procedural needs and the applicability of accelerated procedures. Discussions in the Council preparatory bodies are continuing on other key elements such as guarantees for unaccompanied minors, subsequent applications and the right to an effective remedy. A **revised proposal** of the directive was tabled by the Commission on 1 June 2011.
- **Eurodac Regulation**: discussions are on hold pending a revised Commission proposal. Member states have requested additional provisions which would allow law enforcement authorities to access this central EU-wide fingerprint database, subject to strict conditions on data protection, for the purposes of fighting terrorism and organised crime.
- **Dublin Regulation**: negotiations between the Council and the European Parliament are expected to start soon on the Dublin regulation, which establishes the procedures for determining the member state responsible for examining an application for international protection. The Council has introduced a **mechanism for early warning, preparedness and crisis management**. This mechanism is aimed at evaluating the practical functioning of national asylum systems, assisting member states in need and preventing asylum crises. The mechanism would concentrate on adopting measures to prevent asylum crises from developing rather than addressing the consequences of such crises once they had occurred.

In addition, the Council adopted in March 2012 **conclusions** on a common framework for **genuine and practical solidarity** towards member states facing particular pressures on their asylum systems, including through mixed migration flows. These conclusions are intended to constitute a toolbox for EU-wide solidarity towards those member states most affected by such pressures and/or encountering problems in their asylum systems. They aim to complement and help the implementation of the envisioned mechanism for early warning, preparedness and crisis management in the amended Dublin regulation.

Four other agreements and decisions related to the CEAS have already been adopted. They concern:

- **The qualification directive** providing for better, clearer and more harmonised standards for identifying persons in need of international protection which was adopted in November 2011 and entered into force in January 2012.
- **The long term residence directive** adopted in April 2011.
- The creation of the **European Asylum Support Office (EASO)** which started operations in spring 2011.
- The decision taken in March 2012 establishing **common EU resettlement priorities** for 2013 as well as new rules on EU funding for resettlement activities carried out by member states.

As regards the overall context, it should be remembered that the European Council confirmed in its conclusions in June 2011 that negotiations on the various elements of the CEAS should be **concluded by 2012**.

Common procedures for granting and withdrawing international protection. Recast

The Council took note of the **state-of-play** of negotiations on the various outstanding legislative proposals concerning the Common European Asylum System (CEAS).

The situation on the four outstanding dossiers can be described as follows:

– **On the reception conditions directives**, negotiations between the Council and the European Parliament are ongoing. It is the goal of the Presidency to obtain political agreement by the end of June. A revised proposal was tabled by the Commission on 1 June 2011.

– Negotiations between the Council and the European Parliament are also expected to be finalised by the end of June on the **Dublin Regulation**, which establishes the procedures for determining the member state responsible for examining an application for international protection. The Council has introduced a mechanism for early warning, preparedness and crisis management.

This mechanism is aimed at evaluating the practical functioning of national asylum systems, assisting member states in need and preventing asylum crises. The mechanism would concentrate on adopting measures to prevent asylum crises from developing rather than addressing the consequences of such crises once they had occurred.

As a complement to the mechanism for early warning, preparedness and crisis management in the amended Dublin Regulation, the Council adopted in March 2012 conclusions on a common framework for genuine and practical solidarity towards member states facing particular pressures on their asylum systems, including through mixed migration flows. **These conclusions are intended to constitute a toolbox for EU-wide solidarity towards those member states most affected by such pressures and/or encountering problems in their asylum systems.**

– **On the asylum procedures directives**, the Presidency has received a mandate to start negotiations with the European Parliament as soon as possible. A revised proposal of the directive was tabled by the Commission on 1 June 2011.

– **Regarding the Eurodac regulation**, the Commission last week tabled its **new proposal for a revised Eurodac Regulation** (see summary dated 30/05/2012) **which allows law enforcement authorities to access this central EU-wide fingerprint database**, subject to strict conditions on data protection, for the purposes of fighting terrorism and organised crime. After examination in the Council preparatory bodies, negotiations with the European Parliament should start as soon as possible.

On the basis of the mandates obtained from the Permanent Representatives Committee on 21 March 2012 and 4 April 2012 respectively, the Presidency has initiated negotiations with the European Parliament on the recast for Reception Conditions Directive and on the recast for the Dublin Regulation.

On both files a series of four trilogues have been agreed between the Presidency, the European Parliament and the Commission. Furthermore, **it has been agreed to work towards a political agreement on both files by the end of the Danish Presidency**.

The Permanent Representatives Committee has recently initiated discussion on the recast for the Asylum Procedures Directive. On the basis of these discussions, the Presidency hope to be able to initiate negotiations with the European Parliament and **thus paving the way forward for the incoming Cypriot Presidency to finalize negotiations in 2012**.

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 30/11/2009

In the context of the discussions on the Common European Asylum System (CEAS), ministers held a **first exchange of views** on two recent Commission proposals:

- a directive on minimum standards on procedures in member states for granting and withdrawing international protection; and
- a [directive](#) on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted.

The Presidency concluded that the discussion highlighted a number of issues which will need to be addressed in the coming negotiations within the Council and with the European Parliament. These negotiations will be guided by the following principles: more efficiency, greater cost effectiveness and a high level of protection.

The two proposals for amending the directives tabled by the Commission in October 2009 aim to offer a higher degree of protection to victims of persecutions and to improve the coherence between EU asylum instruments. They are also meant to simplify and consolidate procedural standards, thus preventing fraud and improving the efficiency of the asylum process.

The CEAS was launched in the conclusions of the European Council of Tampere in 1999. In October 2008, the European Council adopted the European Pact on Immigration and Asylum and confirmed its commitment to complete the CEAS by 2012. Besides the EASO/ERF and the two most recent directive proposals mentioned above, the following legislative initiatives form part of the CEAS:

- [the reception conditions directive](#),
- [the so-called Dublin II regulation](#), determining the member state responsible for examining an asylum application,
- [the EURODAC regulation](#), establishing a system of comparing fingerprints in order to effectively implement the Dublin system,
- [an amendment to the ERF](#) relating to the establishment of a joint EU resettlement programme.

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 27/10/2011

The Council looked at the **state-of-play** of the asylum package on the basis of a presidency paper.

The existing legislative framework in the field of asylum lays down minimum standards. The Commission, in keeping with the commitment to establish the CEAS by 2012, has submitted a series of proposals aimed at greater harmonisation of national asylum systems and higher levels of protection.

These are at different stages in the legislative process:

- **Qualification directive**: the Council welcomed the fact that the European Parliament endorsed the compromise text agreed in July. This will allow final adoption by the Council in the coming weeks.

- **Dublin II system** establishing procedures for determining the member state responsible for examining an application for international protection: in September 2011, the Council supported the idea to include in the proposal the concept of an early warning and preparedness process for evaluating the practical functioning of national asylum systems, in the form of an 'asylum evaluation mechanism'. On the so-called 'emergency' or 'suspension mechanism' so far included in the Commission proposal a majority of member states maintained their rejection.
- **Eurodac regulation**: discussion on amendments to the rules regulating this fingerprint database are on hold awaiting a proposal which would permit law enforcement access.
- **Asylum procedures and reception conditions directives**: revised proposals were tabled by the Commission on 1 June 2011. Work is ongoing.

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.

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 forms of international protection set out in the Qualification Directive.

Common procedures for granting and withdrawing international protection. Recast

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 amendment 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.

Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 06/04/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 314 votes to 306 with 48 abstentions a legislative resolution 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).

Parliament's position adopted in first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Definitions: Parliament clarifies the concept of “**applicant with special needs**” (due to age, gender, sexual orientation, gender identity, disability, physical or mental illnesses, etc.). However, unlike the committee responsible, the plenary did not propose a new definition for “family members”.

The determining authority: Parliament 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. It has 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 (the determining authority being that in front of which any decision on international protection is taken).

Strengthening procedural guarantees: on the whole, Parliament 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. Parliament stresses 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**.

Parliament strengthens 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 it 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, Parliament calls 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.

Detention: Parliament stresses 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 assistance of applicants:

- the applicant and his/her legal adviser should have access to country of origin information and the procedure to access it;
- legal assistance can be delivered by a qualified non-governmental body or by qualified professionals.

It should be noted that unlike the committee responsible, the plenary rejected the idea of free legal representation of applicants for international protection.

Provisions for the vulnerability of certain applicants: in Parliament's view, 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).

Withdrawal of an application: in a series of new amendments adopted in plenary, Parliament proposed to strengthen the provisions facilitating the withdrawal of an application. Parliament believes that when there is a reasonable cause to consider that an applicant for asylum has implicitly withdrawn, or abandoned his/her application for asylum without reasonable cause, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status if he/she in addition to the above-mentioned reasons: i) has refused to cooperate, or ii) has absconded illegally, or iii) in all likelihood has no right to international protection, or iv) originates from or has transited via a safe third country. In the event of the reopening of the case (if the applicant reports again to the competent authority after a decision to discontinue the examination), this request for a case to be reopened may only be made **once**.

Accelerated examination procedure: in a series of new amendments, the plenary specifies that the accelerated procedure may be applied if it appears that:

- the applicant clearly does not qualify as a refugee or for refugee status in a Member State;
- the applicant has made clearly inconsistent, contradictory, improbable, insufficient or false representations which make his/her claim plainly unconvincing in relation to his/her having been the object of persecution;
- the applicant has submitted a subsequent application which clearly does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin;
- the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so;
- the applicant has failed without good reason to comply with his/her obligations to cooperate in the examination of the facts of his/her case and the establishment of his/her identity;
- the applicant entered the territory of the Member State unlawfully or extended his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry;
- the applicant may for serious reasons be considered a danger to the national security of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law.

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 Parliament, 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. It therefore deletes the provisions that would allow Member States to provide that no, or no full, examination of the applications coming from these countries (considered as conforming with particularly high standards in the area of human rights and the protection of refugees);
- **designation by a Member State of safe third countries of origin:** Member States having the possibility to maintain or adopt legislative measures enabling to designate safe third countries of origin **at national level** for the purposes of the examination of applications for international protection is deleted by Parliament because the objective is to establish a single European system in relation to asylum. This is why the definition of safe third country has to be uniform in all Member States. However the plenary maintains (in contrast to the committee responsible) the Commission's proposal with regard to the concept of the "safe country of origin" in which a country may be considered as "safe" for a given applicant following the individual examination of his/her request;
- it revised the definition of "safe third countries" and **called for this definition to be uniform in all Member States**. As a result, Parliament proposes a new definition of this concept 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,...). **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 Parliament's 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: Parliament wants 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, Parliament wants the proposed Directive to enter into force within 2 years of its adoption (and not in 3 years).